LAND CONVEYANCES, EXCHANGES, AND PRIVATE RELIEF BILLS AND ACTS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 706, S. 835, S. 982, S. 1242 (H.R. 2820), S. 1501, S. 1519, S. 1767, H.R. 1528, H.R. 1543, H.R. 2475, AND H.R. 2863

FEBRUARY 11, 1982

Publication No. 97-64

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
91-534 O WASHINGTON : 1982

5311-24

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LAND CONVEYANCES, EXCHANGES, AND PRIVATE RELIEF BILLS AND ACTS

THURSDAY, FEBRUARY 11, 1982

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 3110, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senators Wallop, Domenici, Warner, Murkowski, and Tsongas.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Good morning. The subcommittee will come to order.

We are here today to hear testimony on the following bills: S. 706, S. 835, S. 982, S. 1242 which is the equivalent of H.R. 2820, S. 1501, S. 1519, S. 1767, H.R. 1528, H.R. 1543, H.R. 2475, and H.R. 2863.

Senator Schmitt wishes to testify on S. 706. He will be here shortly, and I will begin by asking Mr. Myers to start his testimony and ask his permission to interrupt should Senator Schmitt show up to present his statement, and then proceed with Mr. Hinds on S. 982, with Mr. Gilmore on S. 1519, Mr. Housley on S. 706, S. 1242, and S. 1767, H.R. 2820, and H.R. 2863, Mr. Parker on S. 706, S. 835, S. 1501 and H.R. 1528, H.R. 1543, and H.R. 2475.

The record will remain open for 2 weeks from the date of this hearing.

Before we begin, I have two announcements. Senator Symms wishes to make a brief statement and we will entertain that before going on, but I want to say to members of the Departments that are concerned that the testimony was not received 24 hours in advance according to the Legislative Reorganization Act and the rules of this subcommittee.

We realize that you have some problems sometimes with OMB, but the committee has problems, too, and ultimately it may be necessary for us to have some matter of oversight with OMB so that these rules can be complied with. There are obvious reasons why this should take place that are well known to everybody.

These bills are not that controversial, but it is a good habit to get into as a way of doing business properly before we get to those that are controversial, and everybody's time is wasted by that.

With that, Senator Symms?

STATEMENT OF HON. STEVEN D. SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Thank you, Mr. Chairman, and members of the committee. I appreciate your leadership in calling this hearing to consider these bills, including S. 982 which I have had a long interest in from the time that I was over on the other side of the Hill.

S. 982 authorizes the sale of certain surplus public lands along Lake Shore Drive in Idaho to the landowners that live adjacent to these lands. This is not a matter of great national importance, but to the landowners it is a disastrous misunderstanding that will have severe consequences on their livelihood.

The history of this misunderstanding dates back to 1939 when Lake Lowell Dam, constructed by the Federal Reclamation Service in 1937 under President Franklin Roosevelt, created the Deer Flat Wildlife Refuge from the land surrounding the reservoir. Afterward, Lake Shore Drive was constructed and the road did not conform to the boundaries of the land that the Federal Government had acquired for the reservoir.

As a result, 29 parcels of land were isolated from the Deer Flat Wildlife Refuge. Since then, adjacent landowners have absorbed the tracts of land, farmed them, improved them, built upon them, and paid taxes levied on them. Over the years, though, there have been some boundary disputes, and the parcels of land have been treated as though they belong to the adjacent landowners.

In the 1970's, the Boise Office of the Bureau of Reclamation surveyed the land to resolve a legal title dispute and discovered the 29 isolated parcels of land were actually owned by the Federal Government. They then removed these parcels of land from the Deer Flat Wildlife Refuge and determined that the land should be sold. Unfortunately, this land by Federal regulation must be sold by the General Services Administration to the highest bidder on the basis of a sealed bid. It is this regulation that my legislation would correct. That would be to allow the adjacent landowners who have in good faith treated this land as their own to have the first option to purchase it at the current fair market value of the land.

Mr. Chairman, members of the committee, the Department of Interior under both the Reagan and Carter administrations agrees that the land should be sold to the adjacent private landowners, but the Bureau of Reclamation does not have the authority to offer that sale to them without the passage of S. 982.

The Commissioner of Reclamation in response to my April 6, 1981, letter of inquiry has assured me that he will delay reporting these excess lands to GSA for disposal until this legislation can be passed.

In addition, the Commissioner noted that there is a similar situation involving the small tracts of land adjacent to Orchard Ave., also adjacent to Lake Lowell. It would be my desire to see the com-

mittee adopt the necessary language to include these tracts in S. 982.

In closing, Mr. Chairman, I would like to request that my correspondence with the Bureau of Reclamation, then the Water and Power Resources Service, be included in the hearing record.

Again, I commend you for calling this hearing and look forward to working with you in seeing this legislation become law, and I have letters from the Commissioner, 1980—there are two of them—and return letter, August 21, April 6, when I wrote to Mr. Robert Broadbent, 1981, and his response, April 27, 1981.

Senator WALLOP. Thank you, Senator Symms. Those will all be made part of the record, and given the fact that this is the closing week before the recess, all the committees are meeting and all committees are going full force.

[The correspondence submitted by Senator Symms follows:]

United States Department of the Interior

WATER AND POWER RESOURCES SERVICE
WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 420
706.

APR 27 1981

Apr 29 2 31 PM '81

Honorable Steve Symms
United States Senate
Washington, DC 20510

Dear Senator Symms:

This is in response to your letter of April 6, 1981, regarding our disposal of some narrow strips of land along Lake Shore Drive, Lake Lowell, Idaho, (previously known as Deer Flat Reservoir).

I have read S.982 and support your proposal to dispose of these lands to those individuals holding the adjacent private lands. In that respect, I will delay the reporting of these lands to the General Services Administration for disposal until you have had an opportunity to obtain remedial legislation.

We recently learned that there is a somewhat similiar situation involving a few small tracts of land adjacent to Orchard Avenue also located adjacent to Lake Lowell. You may wish to amend S.982 to include the disposal of these small tracts along with those small tracts located adjacent to Lake Shore Drive.

I have asked the Regional Office to provide me with legal descriptions of the tracts and maps of the areas involved. When they are received, I will furnish copies to you.

If I can be of any further service, please contact me.

Sincerely yours,

Robert Broadbent

Robert N. Broadbent
Commissioner

United States Department of the Interior
BUREAU OF RECLAMATION
~~WATER AND POWER RESOURCES SERVICE~~
WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 420
706.

JUN 16 1981

Honorable Steve Symms
United States Senate
Washington, DC 20510

Dear Senator Symms:

Please refer to our letter of April 27, 1981, to you regarding our disposal of some narrow strips of land along Lake Shore Drive, Lake Lowell, Idaho (copy enclosed for your convenience). In that letter we said that we would give you copies of the legal descriptions of the tracts and maps of the area involved. Accordingly, we have enclosed the plats and legal descriptions of 39 parcels of land adjacent to Lake Shore Drive on the south side of Lake Lowell and four parcels of land adjacent to Orchard Avenue on the north side of Lake Lowell which are proposed for disposal.

If we can be of any further service, please contact us.

Sincerely yours,

Robert N. Broadbent

Robert N. Broadbent
Commissioner

Enclosures

ROBERT J. DOLE, KANS., CHAIRMAN
BOB PACKWOOD, OREG.
WILLIAM V. ROTH, JR., DEL.
JOHN C. DANFORTH, MO.
JOHN H. CHAFEE, R.I.
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RUSSELL B. LONG, LA.
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LLOYD BENTSEN, TEX.
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DAVID L. BOREN, OKLA.
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GEORGE J. MITCHELL, MAINE
ROBERT E. LIGHTHIZER, CHIEF COUNSEL
MICHAEL STERN, MINORITY STAFF DIRECTOR

JUN 2 5 1981

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, D.C. 20510

June 23, 1981

Senator James A. McClure
Chairman
Senate Energy and Natural
Resources Committee
3106 Dirksen Senate Building
Washington, D.C. 20510

Dear Jim:

I have recently received copies of the legal land tract descriptions of 39 parcels of land adjacent to Lake Shore Drive on the south side of Lake Lowell and four parcels of land adjacent to Orchard Avenue on the north side of Lake Lowell. The descriptions are the final documentation necessary to proceed with S. 982, which would dispose of these lands to those individuals holding the adjacent private lands. I would appreciate your review of these documents, and am hopeful of speedy consideration and passage of the remedial legislation. As you know, the Bureau of Reclamation concurs fully with our efforts, and is delaying reporting these lands to the General Services Administration for disposal until action on S. 982 is taken.

As the enclosed legal descriptions of the tracts of land are my only copies, I would appreciate your keeping them on file in the Committee for use during Committee and floor action on the bill.

Best regards.

Sincerely,

Steve Symms
United States Senator

SS/wfc

Enclosure

STEVEN D. SYMMS
1st District, Idaho

Washington Office:
2346 Rayburn Office Building
Washington, D.C. 20515
202-225-6611

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
COMMITTEE ON AGRICULTURE

Congress of the United States
House of Representatives
Washington, D.C. 20515

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Room 134, Borah Post Office
Post Office Box 1190
Boise, Idaho 83701
208-334-1776

205 Federal Building
Coeur d'Alene, Idaho 83814
208-664-5490

Lewis-Clark Hotel
Lewiston, Idaho 83501
208-743-1492

Room 86, Mark IV Motor Inn
Post Office Box 8630
Moscow, Idaho 83843
208-882-8360

August 11, 1980

R. Keith Higginson
Commissioner
Water and Power Resources Service
Department of the Interior
18th and C Street, N.W.
Washington, D.C. 20240

Dear Commissioner Higginson,

The Water and Power Resources Service in Boise, Idaho is acting at this time to dispose of roughly 100 acres of land near Deer Flat Reservoir, along what is called Lake Shore Drive. For the most part, the lands are narrow tracts lying between private ownership and a county road. For many years, because of an inaccurate survey previously done, these lands have been used for access, cultivated for farming, and even built upon in some cases. Taxes have even been paid on portions of the land.

A recent land survey showed that some 29 parcels, totally about 100 acres, may actually be owned by the government, and since the narrow tracts are not needed for project purposes, it was determined that the land should be sold as required by federal law. The Water and Power Resources Service proposal is to now release these lands to the G.S.A. for disposal, when they will be sold on a sealed bid basis to the highest bidder.

Because I feel that the disposal of these lands in this manner would be a travesty for many of my constituents, I am looking into the possibilities of sponsoring private legislation to work out a more equitable solution.

Consequently, until all aspects of this question are studied, I am asking that your office delay the disposal of the land. I am also formally requesting the legal descriptions and maps of the land involved, as they are compiled.

The people who bought and cared for this land in good faith deserve a chance to have their case heard. I hope that together, we may work out an equitable solution for all concerned. Thank you for your help.

Sincerely,

Steve Symms

Steve Symms
Member of Congress

SS:wds

AUG 22 1980

United States Department of the Interior

WATER AND POWER RESOURCES SERVICE
WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 420/100
706.

AUG 21 1980

Honorable Steve Symms
House of Representatives
Washington, DC 20515

Dear Steve:

This is in response to your letter of August 11, 1980, regarding our disposal of some narrow strips of land along Lake Shore Drive, Deer Flat Reservoir, Idaho.

I support your proposal to dispose of these lands to those individuals holding the adjacent private lands. In that respect, I will delay the reporting of these lands to the General Services Administration for disposal until you have had an opportunity to sponsor and introduce remedial legislation.

I would suggest that these lands be made available to the adjacent landowners at a fair market value not reflecting any improvements which have been placed on the land due to the lack of an accurate survey. I have asked the Regional Office to provide me with the legal descriptions and maps of the area which you requested. When they are received, I will furnish copies to you.

If I can be of any further service, please contact me.

Sincerely yours,

R. Keith Higginson
Commissioner

ROBERT T. STAFFORD, VT., CHAIRMAN
HOWARD H. BAKER, JR., TENN.
PETE V. DOMENICI, N. MEX.
JOHN H. CHAFEE, R.I.
ALAN K. SIMPSON, WYO.
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STEVE SYMMS, IDAHO
BLADE GORTON, WASH.
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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, D.C. 20510

April 6, 1981

Mr. Robert Broadbent
Commissioner
Water and Power Resources Service
Department of the Interior
18th and C Street, N.W.
Washington, D.C. 20240

Dear Commissioner Broadbent:

Last year, at the request of Members of the Idaho Congressional delegation, Commissioner Higginson delayed action on the disposal of land along Lake Shore Drive, Deer Flat Reservoir, Idaho. I have enclosed a copy of a letter which I sent to him, and his response.

Essentially, as the correspondence shows, the land has been treated for decades as belonging to the individuals who held the adjacent private lands. This position was upheld by an inaccurate survey of the land. Last year, I introduced legislation to convey the land in question to those land owners at fair market value before placing it up for sale on a sealed bid basis.

I am writing to ask for your support for this legislation. The land owners, who have held this land under the understanding that it was theirs have done so in good faith. I hope that we can resolve their situation in good faith. As I mentioned to Commissioner Higginson, I also would like the Bureau to provide me with legal descriptions and maps of the lands involved.

Thank you for your consideration of this important issue.

Best regards.

Yours for a free society,

Steve Symms

Steve Symms
United States Senator

SS/wfc

Senator WALLOP. Senator Tsongas has a statement which he would wish to present for the record, too, and then Mr. Myers, with your indulgence, we will proceed on yours.

STATEMENT OF HON. PAUL E. TSONGAS, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator TSONGAS. Thank you, Mr. Chairman. I appreciate your listening to all our rather parochial interests here.

Mr. Chairman, the bill before us facilitates the exchange of land between the Department of Interior and the Charles River Breeding Laboratory in Wilmington, Mass.

We have been involved in this issue for some time, and I appreciate your willingness to put this on the agenda.

The primary purpose of the exchange is to make the whole of Racoon Key available to Charles River Breeding Laboratories for the purpose of breeding rhesus monkeys for medical and scientific research.

In 1971, Charles River, initiated a breeding project on Key Lois, formerly Hoggerhead Key, in Monroe County, Fla. In 1976, it became evident that the demand for rhesus monkeys necessitated moving to a larger area than Key Lois. Charles River purchased a privately owned island of sufficient size and located near Key Lois in order to allow the economic development of a second monkey colony in the keys.

Senator WALLOP. Could we get that done?

Senator TSONGAS. Since the purchase of Racoon Key, the island has been under contract with the Food and Drug Administration's Bureau of Biologics which uses the animals in its national polio vaccine testing program.

Rather than take the committee's time, Mr. Chairman, I would ask that the balance of the statement appear in the record.

Basically it is an exchange whereby the Charles River Breeding Laboratory has access and the use of Racoon Key, in exchange to give the Department of Interior an equal amount of land in the adjacent key, and after the use of the Racoon Key for those purposes, it would revert back to the Federal Government so the Government actually does very well under the circumstances, and the Charles River Breeding Laboratories is allowed the use of the land as it was originally intended, so I appreciate the chairman's interest, and his willingness to have this hearing.

[The prepared statement of Senator Tsongas follows:]

STATEMENT OF HON. PAUL E. TSONGAS, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

This bill facilitates the exchange of land between the Department of Interior and the Charles River Breeding Laboratories of Wilmington, Massachusetts.

The primary purpose of the exchange is to make the whole of Raccoon Key available to Charles River Breeding Laboratories for the purpose of breeding rhesus monkeys for medical and scientific research.

In 1971, Charles River initiated a breeding project on Key Lois (formerly Hoggerhead Key) in Monroe County, Florida. By 1976 it became evident that the demand for rhesus monkeys necessitated moving to an area larger than Key Lois. Charles River purchased a privately owned island of sufficient size and located near Key Lois in order to allow for the economical development of a second monkey colony in the Keys. Since the purchase of Raccoon Key, the island has been under contract

with the Food and Drug Administration's Bureau of Biologics which uses the animals in its national polio vaccine testing program.

Unfortunately, Charles River was not aware that 24.6 acres of Raccoon Key belonged to the Federal Government as part of the Great White Heron National Wildlife Refuge and the Florida Keys Wilderness Area established by Congress. The confusion arose because the 24.6 acres had never been in the private lands since the time Florida became a State. The only time the "title" to the land had changed hands was in 1938 when the acrege on Raccoon Key became part of the Great White Heron National Wildlife Refuge, as did much of the property previously in the public domain and under the general auspices of the State of Florida.

In early 1977, Charles River was told by the Federal refuge manager that the company was making illegal use of Federal property. Together Charles River and the Fish and Wildlife Service determined that a privately owned parcel of land known as North Cudjoe Key would be suitable for an exchange on an equal-value basis in order to allow Charles River to obtain use of the whole of Raccoon Key if the details of an agreement could be worked out that would benefit the wilderness area in the long term. After negotiation with the Fish and Wildlife Service, Charles River bought the North Cudjoe Key in March of 1979.

The agreement reached by the two parties requires that: first, the Fish and Wildlife Service will transfer title to 24.6 acres of Raccoon Key under its jurisdiction to Charles River; second, Charles River will transfer title to 24.6 acres of North Cudjoe Key to the Fish and Wildlife Service for inclusion in the Florida Keys Wilderness Area; third, the Fish and Wildlife Service will purchase the balance of 48.4 acres of North Cudjoe Key from Charles River also for inclusion in the Florida Keys Wilderness Area; and fourth, Charles River will convey title to the whole of Raccoon Key (approximately 203 acres) to the Fish and Wildlife Service for inclusion in the Florida Key Wilderness at some point in the future when the corporation determines that the Key is no longer valuable for simian breeding. Thus, the Fish and Wildlife Service will immediately realize the benefits of the inclusion of 73 acres of North Cudjoe Key in the wilderness area and will eventually gain control of over 200 acres of Raccoon Key donated by the Charles River Laboratories to the Fish and Wildlife Service.

Senator WALLOP. I'm fascinated. Thanks, Paul, and your colleague, Senator Kennedy, phoned me about that. I know really of no particular controversy about any of these. There are those probably who would not want us to breed monkeys for the use of mankind or any other reason. They probably won't show up for this.

Without objection, I will place copies of the bills and acts and reports into the hearing record, and we will proceed.

[The texts of the bills, acts, and reports follow:]

II

97TH CONGRESS
1ST SESSION

S. 706

To establish a national policy to provide for the timely notice, conduct, approval, and record of Federal land surveys, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 16), 1981

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish a national policy to provide for the timely notice, conduct, approval, and record of Federal land surveys, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Land Survey Act of 1981".

SEC. 2. (a) The purposes of this Act are—

(1) to declare a national policy which will encourage the timely conduct and approval of Federal land surveys;

(2) to provide the public with reasonable notice of intent in the conduct and approval of these surveys;

(3) to promote and foster a spirit of cooperation with landowners and the several States in the survey of Federal lands;

(4) to promote the stability and permanence of the Nation's records of survey; and

(5) to provide the basis for a multipurpose national land information system.

(b) The Congress, recognizing the profound impact of Federal land surveys on land record stability, property conveyance, environmental quality, and resource productivity and the critical importance of Federal land surveys to the economic and social well-being of this Nation's citizens, declares that it is the continuing policy of the Federal Government to—

(1) coordinate Federal land surveys with other Federal plans, functions, programs, and resources;

(2) protect the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such Federal land survey, resurvey, or retracement;

(3) cooperate with State and local governments, and other concerned public and private organizations, in the timely notice, conduct, and maintenance of such Federal land surveys, resurveys, and retracements; and

(4) provide national leadership in the development of a multipurpose national cadastre as a basis for improved land conveyance procedures, for equitable taxation, for informed resource management and environmental planning, and to further the Nation's economic productivity.

SEC. 3. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") or such agency as the Secretary may designate, in the survey or resurvey of public lands made after the date of enactment of this Act, shall—

(1) provide all affected Federal agencies, local governments, individual claimants, entrymen, landowners, and the local public with notice of intent to conduct, certify, or record a survey or resurvey not less than thirty days prior to the intended action;

(2) initiate any survey or resurvey within six months of providing notice of intent to conduct such survey or resurvey;

(3) complete any survey or resurvey and all necessary monumentation, affixing a permanent mark designating the year of the survey or resurvey on each monument when established or reestablished within two years of the date of initiating the survey or resurvey; and

(4) certify the survey or resurvey in the appropriate land office within ninety days of the date the survey or resurvey is completed.

(b) When a section subdivision survey is conducted involving both lands owned by the Federal Government and non-Federal lands, the section center corner shall be monumented and certified in accordance with subsection (a).

(c) If the Secretary or the Secretary's designee fails to certify a monument within ninety days as required in subsection (a)(4), the temporary monument shall be removed within fifteen days after the ninety-day period has expired. Notice of such removal with reasons for the removal and notice of any plans for resurvey or retracement shall be published in a local newspaper and the Federal Register within thirty days of removal.

SEC. 4. (a) The Secretary of the Interior and the Secretary of Agriculture, in consultation with the Governors of the several States and the President of the National Academy of Sciences, are authorized and directed to conduct an assessment of multipurpose national cadastre information needs and develop a feasibility study for establishing a multipurpose national cadastre system. The Secretary of the Interior and the Secretary of Agriculture shall submit the feasibility report with recommendations and any proposals for legislation to the majority leader of the Senate and the Speaker of the

House of Representatives within three years of the date of the enactment of this Act.

(b) The recommendations contained in the feasibility study shall be consistent with the Forest and Rangeland Resources Planning Act of 1974, the Federal Land Policy and Management Act of 1976, and the purposes and policies of this Act.

97TH CONGRESS
1ST SESSION

S. 835

For the relief of Jerry L. Crow.

IN THE SENATE OF THE UNITED STATES

MARCH 31 (legislative day, FEBRUARY 16), 1981

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

For the relief of Jerry L. Crow.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Jerry L. Crow may, within one year of the date of enactment of this Act, select not more than ten acres of land from the public lands included in his original application to purchase a trade and manufacturing site located at mile numbered 68 on the Denali Highway in the State of Alaska, and shall notify the Secretary of the Interior of his intention to purchase the selected land under the provisions of this Act.

SEC. 2. Notwithstanding the provisions of section 203 of the Federal Land Policy and Management Act (90 Stat. 2743) and as soon as practicable upon receipt of a notification under section 1 of this Act, the Secretary is directed to sell the selected land to Mr. Crow at a price based upon their fair market value as of 1967, excluding any value added to the lands by Mr. Crow.

SEC. 3. Pursuant to the provisions of section 302 of the Federal Land Policy and Management Act, the Secretary shall offer to enter into an agreement with Mr. Crow which—

(a) grants a thirty-year lease on those public lands included in the original application by Mr. Crow for a trade and manufacturing site, excluding any land selected under section 1 of this Act;

(b) provides that the annual lease fee be $10; and

(c) grants to Mr. Crow an option to purchase any portion or all of the leased land, exercisable at any time within the thirty-year lease period.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 10 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your Committee has requested the views of this Department on S. 835, a bill "For the relief of Jerry L. Crow."

We recommend that the bill not be enacted.

S. 835 would allow Jerry L. Crow to select up to ten acres of the public lands included in his application for purchase of a trade and manufacturing (T & M) site in Alaska. The bill would direct the Secretary of the Interior to sell the selected land to Mr. Crow at a price based upon its fair market value in 1967, the year when the application was originally filed, excluding any value added to the lands by Mr. Crow. In addition, the Secretary would be required to offer to enter into an agreement with Mr. Crow pursuant to section 302 of the Federal Land Policy and Management Act of 1976, which would grant him a 30-year lease of the balance of the public lands included in the original application for a T & M site, with an option to purchase. The annual rental would be $10.

The bill is similar, in its effect, to S. 1715 in the 96th Congress, which would have required acceptance of Mr. Crow's application for a Trade and Manufacturing site, if the application was found to be proper under the Act of May 14, 1898, as amended (43 U.S.C. 657(a)), except that the provisions of section 10 of that Act prohibiting conveyance of T & M sites for a prospective commercial enterprise would not apply.

We opposed enactment of S. 1715 and we adhere to that position in regard to S. 835. Since both the circumstances of Mr. Crow's situation and our position are largely unchanged, we quote significant portions of our March 24, 1980, report on S. 1715:

"Section 10 of the 1898 Act allows certain United States citizens, associations of citizens or corporations, who are in possession of and occupying public lands in Alaska for the purpose of trade, manufacturing or other productive industry, to purchase one claim of land not exceeding 80 acres at $2.50 an acre. To purchase a claim, a claimant must show that the area embraces improvements of the claimant and is needed for the claimant's trade, manufacture or other productive industry.

"The regulations implementing these provisions are in 43 CFR 2562, "Trade and Manufacturing Sites." These regulations specifically provide that a site for a prospective business cannot be acquired under section 10 of the 1898 Act (43 CFR 2562.3(d)(1)).

"The T & M site which is the subject of S. 1715, contains approximately 80 acres and is located at mile 68 on the Denali Highway in the Fairbanks Meridian, Alaska. The

claimant, Jerry L. Crow, filed a Notice of Location stating that the date of settlement was March 24, 1967, and that the desired use of the site was for "housekeeping cabins and campground."

"On May 17, 1972, the claimant filed an application to purchase the site claiming various improvements. On June 17, 1973, the Bureau of Land Management (BLM) conducted a field examination of the site. In his report, the field examiner recommended rejection of the claim because the claimant failed to show that he had conducted a real commercial operation on the land. On November 14, 1974, BLM initiated a contest complaint against the claimant charging that the claimant was attempting to acquire the land for a prospective commercial campground and he had failed to make a good faith attempt to prove up on his claim in the manner required by law.

"A hearing on the contest complaint was held on June 26, 1975, in Fairbanks, Alaska. In a decision dated July 22, 1976, an Administrative Law Judge rejected the T & M site application on the basis that less than half the area was occupied by any improvements and campground rental was such a de minimus activity that it cannot be considered to be the productive industry contemplated by the 1898 Act.

"The claimant appealed to the Interior Board of Land Appeals (IBLA) and an IBLA decision affirming the decision of the Administrative Law Judge on BLM's contest action was issued on January 24, 1977 (28 IBLA 345). A copy of that decision, which discusses pertinent facts and legal theories in some detail, is enclosed.

"The claimant filed a complaint in the U.S. District Court for the District of Alaska seeking judicial review of the IBLA decision. In a Memorandum and Order dated June 20, 1978, the District Court upheld the IBLA decision. On July 25, 1979, BLM issued a notice cancelling the claim and requiring that the improvements be removed. By letter of August 23, 1979, the claimant requested extension of time to remove the improvements. BLM granted an extension of time until September 30, 1980, for removal.

"We believe the IBLA decision clearly shows that the claimant has not met the requirements for patent of a T & M site in accordance with the 1898 Act. As the IBLA stated, it is not necessary to show that a profitable operation has been developed. However, there must be evidence of a bona fide commercial enterprise from which the claimant hopes to derive a profit. The IBLA found that since there were only seven or eight campsites in the T & M site and claimant charged a $1.00 overnight camping fee, the claimant could not reasonably expect to derive a profit from the campsite considering his initial investment (mainly $3,000 for a cabin/office) and the expenses of the camp, which the claimant estimated to be $1,200 each year for 1971 and 1972. This is especially true in view of the fact that the site is not accessible in the winter as the road leading to it usually closes in October and does not open until June.

"In addition to the absence of any legal basis for conveyance of the subject T & M site, we do not believe there are any equities on the part of the claimant which would justify exempting his claim by special legislation from the provisions of law. Absent any apparent rights or equities in this case, we believe enactment of S. 1715 would set an unfavorable precedent that could render meaningless those criteria for patenting T & M sites established by Congress in the 1898 Act. Also, we believe enactment of the bill would unfairly favor the claimant over other T & M claimants who are in a similar situation."

The facts of the case remain unchanged except that an extension of the time to remove improvements was granted to Mr. Crow on January 23, 1981.

We offer the following additional reason for opposing the bill:

The special relief which the bill would grant could encourage other applicants to use "prospective business" rather than "productive business" during the life of the claim in order to gain title to land through T & M operations. Such activity would conflict with the Act of May 14, 1898, as amended (30 Stat. 413; 43 U.S.C. 687(a)) which indicates that a T & M site may be purchased" . . . upon submission of proof that said area embraces improvements . . . needed in the prosecution of . . . productive industry . . . ." In addition, use of a "prospective business" to acquire a T & M site is specifically prohibited by 43 CFR 2562.3(d)(1). Further, the relief would be inequitable to those claimants who actually showed more "business" having been conducted than did Mr. Crow, but whose claims have been rejected for like reasons. We know of no equity that would distinguish Mr. Crow from others in a simliar situation.

Section 3 of the bill refers to an "agreement" which the Secretary would be required to enter into with Mr. Crow, "pursuant to the provisions of section 302 of the Federal Land Policy and Management Act." Section 302 of that Act does not authorize or require the Secretary to enter into "agreements" with private individuals. However, the section does authorize the Secretary to lease public lands. If the bill is favorably considered by the Congress, we recommend that Section 3 be revised to read:

> "The Secretary shall offer to lease to Mr. Crow for 30 years, with an option to purchase, for use as a trade and manufacturing site, all or a portion of the lands included in his original application, with rental based on the land's fair market value. If the option to purchase is exercised by Mr. Crow, the purchase price shall be the fair market value at the time of purchase. Fair market value shall be determined by the Secretary or his designee."

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Assistant SECRETARY Garrey E. Carruthers

IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

UNITED STATES
v.
JERRY L. CROW

IBLA 76-766 Decided January 24, 1977

Appeal from a decision of Administrative Law Judge E. Kendall Clarke rejecting trade and manufacturing site application to purchase F-533.

Affirmed as modified.

1. Alaska: Trade and Manufacturing Sites

A trade and manufacturing site application is properly rejected when there is only a cabin on the site, roads and clearing for a campground and the land has been used intermittently for campsite rentals, only a few people used the campsites during the life of the claim, and any revenues which were derived or could have been derived from use of the site as a campground would not be such as to engender the belief that appellant was engaged in a productive industry or that he hopes to garner a profit from operation of a business.

2. Rules of Practice: Generally--Rules of Practice: Government Contests

The fact that the contest regulations may not contain a specific provision providing for the assertion of affirmative defenses or counterclaims in an answer to a contest complaint does not necessarily bar an Administrative Law Judge from consideration of the substance of such assertions.

APPEARANCES: Thomas P. Blanton, Esq., Fairbanks, Alaska, for appellant; James H. Mothershead, Esq., Office of the Solicitor, Department of the Interior, Anchorage, Alaska, for the Government.

IBLA 76-766

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On June 20, 1967, Jerry L. Crow filed a notice of location of settlement or occupancy for a trade and manufacturing (T&M) site in unsurveyed section 6, T. 22 S., R. 3 E., Fairbanks Meridian. He gave the date of settlement as March 24, 1967. The desired use for the site was listed as "housekeeping cabins and campground." The Bureau of Land Management (BLM) mailed Crow a notice of claim acknowledgment dated August 4, 1967.

On May 17, 1972, Crow filed an application to purchase the site claiming various improvements.

On November 14, 1974, BLM initiated a contest against the T&M site charging that (1) the "Contestee is attempting to acquire the land for a prospective commercial campground" and that (2) "The contestee failed to make a good faith attempt to prove up on his claim in the manner required by the Federal land laws * * *."

A hearing on the contest complaint was held on June 26, 1975, in Fairbanks, Alaska.

By decision dated July 22, 1976, Administrative Law Judge E. Kendall Clarke in rejecting the application cited two reasons: (1) "less than half the area was occupied by any improvements" and (2) "campground rental was such a de minimis activity that it cannot be considered to be the productive industry contemplated by statute; it simply is not a bona fide commercial enterprise from which one could hope to derive a profit."

The application was made pursuant to section 10 of the Act of May 14, 1898, 1/ as amended, 43 U.S.C. § 687a (1970), which provided in pertinent part:

> Any citizen * * * in the possession of and occupying public lands in Alaska in good faith for the purpose of trade, manufacture, or other productive industry, may * * * purchase one claim * * * upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry * * *.

Section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), requires that applications to purchase, along with the required proof, must be filed within 5 years after the filing of the notice of claim.

1/ This statute was repealed by sec. 703(a) of P.L. 94-579, 90 Stat. 2789-2790, on October 21, 1976, the repeal to be effective as of 10 years from October 21, 1976.

The regulations, 43 CFR 2562.3(d)(1), state that the application must show:

> That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 43 U.S.C. 687a).

Appellant's T&M site is located at mile 68 on the Denali Highway (Ex. 38). The site is not accessible in the winter as the road usually closes in October and does not open until June (Tr. 74). There is a road constructed by BLM traversing the claim and connecting with Denali Highway (Tr. 79; Ex. 38).

Appellant began improving the site in 1968 when he purchased a "Rustic Craft" log cabin and had it constructed in the northwest portion of the site. The total cost for the cabin and the construction was $3,000. The cabin served as both a cabin and an office (Tr. 76-78). Appellant also had a survey conducted. He paid the surveyor $100 and allowed him to use the cabin during hunting season (Tr. 79).

A previous applicant for the same T&M site had made most of the road improvements which consisted of short graveled spur roads leading from the BLM road. Campsites were located at the termini of the spur roads (Tr. 79; Ex. 37). The campsites consisted of a cleared area of sufficient size to place a picnic table, a ring of rocks for a fire, a trash can, and an area for a tent. Two outhouses were constructed and water was provided from a stream which passes through the site.

Appellant stated that some of the improvements were constructed in 1970, but that "the greatest amount of improvements were done in 1971" (Tr. 80). Appellant testified that the cabin was rented to a man for June and July of both 1970 and 1971 and June of 1972. The rental was $150 per month or a total of $750 (Tr. 80).

Appellant opened the camping business around June 15, 1971, charging campers $1.00 per night for a campsite. He had an employee who tended the campground. In return the employee received room (cabin) and board (groceries provided by appellant) and also the employee was allowed to keep the camping fees (Tr. 86-87). Appellant visited the site approximately every 2 weeks, delivering groceries and building supplies (Tr. 85).

A guest register filed by appellant with his application to purchase showed 12 campers or groups of campers used the site from August 22, 1971, through September 4, 1971, and 12 more from July 3, 1972, to August 21, 1972. Appellant stated that the register was not signed by all guests of the campground and that the register was not meant to be a record of income (Tr. 92). Appellant admitted that some of the campsites were never used (Tr. 90).

Appellant stated that total operating expenses of the camp for 1971 and 1972 were $1,200 each year (Tr. 112).

The T&M site was examined in June 1973 by Rick Tevebaugh, realty specialist for BLM. Tevebaugh was accompanied by appellant. In his land report (Ex. 38) dated September 9, 1973, Mr. Tevebaugh concluded:

> Mr. Crow has obviously expended a fair amount of money in developing this operation, primarily in the cabin or office; however, it is not believed that the law can be interpreted to encompass an operation so infrequently used by customers and so unproductive of gross receipts as a business such as this (Re. James E. Allen A-30085 decided Feb. 23, 1965).
>
> In view of the fact that Mr. Crow has failed to show that he has conducted a real commercial operation on the land, it is recommended that this case, F-533, be rejected in its entirety.

Due to the death of Tevebaugh prior to the hearing another BLM realty specialist, John Dolak, conducted an examination of the site on June 13, 1975 (Tr. 10). Dolak found essentially the same improvements as those outlined by Tevebaugh in his report (Ex. 38). Dolak's conclusion was the same as that of Tevebaugh (Tr. 13).

There is no dispute that appellant expended money in establishing a campground, nor is there any dispute over the type and extent of improvements constructed by appellant. The real question presented centers around the nature of the actual business conducted by appellant.

As an applicant for patent to public land under the trade and manufacturing law, appellant has the burden of showing compliance with the law and regulations. See Lynn E. Erickson, 10 IBLA 11, 80 I.D. 215 (1973); Lee S. Gardner, A-30586 (September 26, 1966).

Appellant argues that the lack of improvements on part of the site was not an issue in the contest and is not a reason to reject the application to purchase. Appellant overlooks the fact that Section 10 of the Act, supra, limits the right to purchase a tract of land in Alaska under the T&M site law to that land actually

occupied and used for such a site. Lloyd Schade, 12 IBLA 316 (1973); Golden Valley Electric Association, 8 IBLA 386 (1972). The Administrative Law Judge found that less than half the site was actually occupied with any improvements. In fact, appellant admitted that he had no improvements east of the BLM road traversing the site. (Tr. 101). Therefore, as to those lands east of the BLM road, the application to purchase was properly rejected as containing no improvements.

The question left for resolution is whether appellant actually established a business and used the remainder of the site adequately for business purposes under the T&M site law.

[1] The Department has interpreted the T&M site law to require that the applicant show at the time application to purchase is filed, that he is presently occupying land for business purposes, that the land presently contains improvements and that it is presently needed for conduct of the existing business. Carl A. Bracale, Jr., A-31149 (April 20, 1970). It is clear that a site for a prospective business cannot be acquired under the T&M site law. 43 CFR 2562.3(d)(1). The Department held in Hershel E. Crutchfield, A-30876 (September 30, 1968), that to make the showing called for by the statute and regulations:

> * * * there must be evidence from which it can be concluded that an applicant is engaged in a bona fide commercial enterprise from which he hopes to derive a profit. It is not necessary to show that a profitable operation has been developed, but there should be evidence of an investment of such a nature that a reasonable return could be expected. The receipt of a few dollars over a period of years does not satisfy these criteria. See James E. Allen, A-30085 (February 23, 1965).

In Allen, supra, the Solicitor stated:

> We do not mean to imply that a modest operation or even an unprofitable one would necessarily fail to qualify under the trade and manufacturing site law. That law does not require the existence of a full-blown enterprise before a patent can issue. We do not believe, however, that the law can be interpreted to encompass an operation so . . . infrequently used by customers and so unproductive of gross receipts as the business operated by the appellant here during the life of his claim.

> The fact that Allen has expended some $2,200 in improvements on the tract does not in itself establish that his venture was commercial. Much of the improvements--construction of the airstrips, etc.--would have been essential for purely personal use of the field. He has made no showing as to how much of his investment was made as a business proposition to be recovered from returns from his operations. This is not to say that he was required to make such a showing but a showing of a reasonable investment from which a reasonable return could be expected would have been evidence in support of the contention that he had established a business operation.

To establish a right to land under the public land laws, the applicant is required to support his assertions with evidence which is in his sole control. United States v. Block, 12 IBLA 393, 80 I.D. 571 (1973).

Herein, appellant failed to provide any concrete evidence as to revenues derived from the campground. The guest register indicates only a few overnight campers for both 1971 and 1972, even though appellant asserts that there were numerous others. The income derived from camping fees went directly to the employee overseeing the campground. Appellant produced no record of the total amount of camping fees received. Appellant did testify that the cabin/office was rented for $750; however, the rental of the cabin/office apparently bore no relation to the campground business.

Appellant has failed to establish that he was engaged in a productive industry during the life of his claim. While it is true that appellant need not show that a profitable operation has been developed, there must be evidence of a bona fide commercial enterprise from which appellant hopes to derive a profit. With only seven or eight campsites and a $1.00 overnight camping fee, even assuming all the campsites were rented every night, appellant could not reasonably expect to derive a profit from the operation considering his expenses and initial investment.

Viewing the evidence in the light most favorable to appellant, any revenues which could have been derived from the site as a campground would not be such as to engender the belief that appellant was engaged in a productive industry.

Having found that appellant's activity on the site was of such a limited nature as not to meet the T&M site law requiring a productive industry, we need not decide the question of whether a campground site alone would be a sufficient business to constitute a "productive industry." Jay Fredrick Cornell, 4 IBLA 11 (1971),

aff'd, Cornell v. Morton, No. 73-1930 (9th Cir., September 3, 1974); cf. Seldon H. Klinke, 7 IBLA 83 (1972).

[2] In appellant's answer to the contest complaint he asserted four "affirmative defenses," (1) the complaint was so vague as to fail to put Contestee on notice of what the deficiencies were in his claim; (2) Contestee never attempted to acquire the land for a prospective commercial campground and it had always been his intention to continue to upgrade, improve and develop the site; (3) Contestant had admitted that Contestee's application to purchase was deemed to be acceptable on its face; (4) contrary to the allegation in paragraph 5(b) of the complaint regarding good faith, Contestee filed evidence of his business operation; and one "counterclaim," (1) the contestant operated in bad faith and failed to act within a reasonable time in processing Contestee's application.

The Administrative Law Judge made the following statement concerning the affirmative defenses and counterclaim in his decision:

> Since there is no provision for affirmative defenses or counterclaim in the regulation under which the contest is brought, no specific rule is made regarding those matters contained in the Answer.

While appellant couched his responses in the answer in terms such as "affirmative defenses" and "counterclaim," the assertions which he made do not fit neatly into such categories. Even though there may be no specific provision for affirmative defenses and counterclaims, the fact that a certain nomenclature was used should not necessarily bar the consideration of the substance of the arguments made by appellant.

Appellant has cited as error on appeal the failure of the Administrative Law Judge to rule in appellant's favor on certain affirmative defenses and the counterclaim.

We note that appellant raised his "counterclaim" at the hearing and that the Administrative Law Judge treated it as a motion to dismiss and denied the motion at that time (Tr. 3-5). Appellant's assertion that the Government was guilty of laches in the delay in processing the application and initiation of the contest must fail in the face of 43 CFR 1810.3(a) which reads:

> The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

While the delays referred to by appellant were unfortunate, they were not such as to encumber appellant in establishing a productive industry on the site during the statutory life of his claim.

As to the "affirmative defenses" appellant contends the Administrative Law Judge failed to rule upon in appellant's favor, i.e., the first and third, set forth supra, the complaint was not so vague as to fail to put appellant on notice. The two charges in the complaint were sufficient to notify appellant that his claim was being contested for the reasons stated in the charges.

In addition, that BLM may have admitted that appellant's application was acceptable on its face does not relieve appellant of the burden of showing that he has complied with the statute and regulations before patent may issue. See Lynn E. Erickson, supra. The contest was brought to determine whether the prima facie showing on the application could be substantiated. In any event, we need not decide whether there was even an adequate prima facie showing since the application indicated "campground" as the business and, as previously indicated, we need not decide whether that is a sufficient business within the meaning of the Act.

The other "affirmative defenses" in appellant's answer were, in effect, disposed of by the conclusions of the Administrative Law Judge in his decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

97TH CONGRESS
1ST SESSION

S. 982

To provide for the conveyance of certain Federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise project, Idaho.

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, FEBRUARY 16), 1981

Mr. SYMMS (for himself and Mr. MCCLURE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for the conveyance of certain Federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise project, Idaho.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Secretary of the Interior (hereinafter referred to as the "Secretary") is hereby authorized to convey all right, title, and interest, except as reserved herein, to certain small tracts of Federal lands located adjacent to Lake Shore Drive, Lake Lowell, Boise project, Idaho, to the adjacent landowners.

SEC. 2. Such conveyances shall be made by the Secretary only to the adjacent landowners, and shall be made within one year from the date of his receipt of a proper application from such landowners. Applicants for such conveyances must pay the fair market value of the lands as of the date of the conveyance, including administrative costs, but excluding the costs to the Government of conducting the necessary land surveys and preparing the legal descriptions of the land to be conveyed. In determining the fair market value of the lands, the Secretary shall not include the value of any improvements made to the lands by the adjacent landowners or their predecessors.

SEC. 3. All conveyances made pursuant to this Act shall reserve to the United States all mineral deposits in the lands and shall assure that the right to mine and remove such minerals is subservient to the surface rights granted in the conveyances.

○

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

FEB 25 1982

Dear Mr. Chairman:

This responds to your request for the views of this Department concerning S. 982, a bill "To provide for the conveyance of certain Federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise Project, Idaho."

We would support enactment of the bill if it is amended as suggested in this report.

The bill would authorize and direct the Secretary to convey to adjacent landowners for a fair market value, certain parcels of land to which the United States holds title. These lands are located immediately south of Lake Shore Drive, Lake Lowell, Idaho.

We recommend that the bill be amended to include four parcels along Orchard Drive. This amendment could be accomplished by adding the words "Orchard and" before the words "Lake Shore" each time they appear in the bill and changing the word "Drive" to "Drives" each time it appears.

The lands in question were part of a much larger tract acquired at the turn of this century for the Lake Lowell Dam and Reservoir by the Bureau of Reclamation. Subsequently, the Deer Flat National Wildlife Refuge was created on lands surrounding the Lake, and Orchard and Lake Shore Drives were constructed around the Lake. Because the roads did not precisely follow the boundary of the Federal tract, a small strip of land adjacent to the roads was isolated from the other Federal lands. These separated lands, the lands now in question, were not thereafter used for Federal project purposes and were ostensibly not part of the Federal tract. Gradually, these parcels (the largest being about 12 acres) were occupied and used by adjacent landholders, who assumed they were part of their own tracts because there was no obvious boundary but the road. Some owners may, in fact, have paid taxes on the lands. In recent years, however, the question of title has created problems, and there is a need to resolve the matter. The Bureau has found the lands no longer necessary for project purposes.

The Department agrees that the equities of the situation favor sale of the lands to the adjacent landowners, for a fair market value as provided in the bill. However, the Bureau does not have the authority to sell this property to the adjacent landowners without legislation. We therefore support enactment of S. 982 as a fair resolution but we propose a further amendment.

We recommend the deletion of the words "but excluding" on page 2 lines 6 and 7 and the substitution of the word "and" in lieu thereof. S. 982 provides that the fair market value to be paid by the landowners exclude the costs to the Federal Government of conducting surveys and preparing legal descriptions of the land involved. Under current law and practice, purchasers of Federal lands pay these costs. There does not appear to be mitigating circumstances that would justify excluding these costs in this instance. Our suggested amendment specifies that the purchasers would pay these costs.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Garrey E. Carruthers

Assistant SECRETARY

97TH CONGRESS
1ST SESSION

S. 1242

To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

IN THE SENATE OF THE UNITED STATES

MAY 20 (legislative day, APRIL 27), 1981

Mr. HAYAKAWA introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Subject to section 2 of this Act, the Secretary of Agriculture shall convey to any person, all right, title, and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be a part of the El Dorado National Forest.

(b) Each person to whom property is conveyed pursuant to this Act shall reimburse the Secretary of Agriculture for all administrative expenses incident to such conveyance, and in addition shall pay to the United States the following:

(1) an amount equal to the acreage or fraction thereof of the property conveyed to such person, multiplied by the per-acre price for the remainder of the lot (exclusive of any improvements) referred to in paragraph (1) of subsection (a) of this section paid by such person or his predecessor in interest at the time of the original purchase of such lot after formation of the subdivision; and

(2) if such person elects to receive title to the mineral interests in the property conveyed, the fair

market value thereof; but if such person does not so elect, all such mineral interests shall be reserved to the United States.

SEC. 2. A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

SEC. 3. (a) For purposes of this Act, the term "1957 recorded surveyor's map", used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

(b) For purposes of this Act, the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more particularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

SEC. 4. Subject to valid existing rights, all mineral interests retained by the United States pursuant to section 1(b)(2) of this Act are hereby withdrawn from all forms of entry or appropriation under the mining laws and from the operation of the mineral leasing laws of the United States.

O

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 25 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 1242 and H.R. 2820, identical bills "To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map."

We defer to the Department of Agriculture as to the advisability of the bills' enactment.

S. 1242 and H.R. 2820 would direct the Secretary of Agriculture to convey to certain private parties all right, title, and interest of the United States to a parcel of land located within the Eldorado National Forest, if the land is found to overlap national forest land by reason of a specified private survey. Mineral interests would be conveyed under the bills upon payment of fair market value. If not conveyed, such interests would be withdrawn from entry or appropriation under the mining laws and from the operation of the mineral leasing laws of the United States.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Garrey E. Carruthers

Assistant SECRETARY

I

Union Calendar No. 116

97TH CONGRESS
1ST SESSION

H. R. 2820

[Report No. 97-168]

To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1981

Mr. DELLUMS (for himself, Mr. EDWARDS of California, Mr. FAZIO, Mr. STARK, and Mr. SHUMWAY) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

JULY 9, 1981

Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

---

A BILL

To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Subject to section 2 of this Act, the Secretary of Agriculture shall convey to any person, all right, title, and interest of the United States in and to a portion of real property in the El Dorado National Forest, El Dorado County, California, if—

(1) such portion was depicted in the 1957 recorded surveyor's map of the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, as being included in a lot with respect to which title to the remaining portion of such lot is held by such person, and

(2) such portion was determined, following surveys conducted under the auspices of the Forest Service in 1974 and 1976, and contrary to the map referred to in paragraph (1), to be a part of the El Dorado National Forest.

(b) Each person to whom property is conveyed pursuant to this Act shall reimburse the Secretary of Agriculture for all administrative expenses incident to such conveyance, and in addition shall pay to the United States the following:

(1) an amount equal to the acreage or fraction thereof of the property conveyed to such person, multiplied by the per-acre price for the remainder of the lot (exclusive of any improvements) referred to in paragraph (1) of subsection (a) of this section paid by such

person or his predecessor in interest at the time of the original purchase of such lot after formation of the subdivision; and

(2) if such person elects to receive title to the mineral interests in the property conveyed, the fair market value thereof; but if such person does not so elect, all such mineral interests shall be reserved to the United States.

SEC. 2. A conveyance may be made under this Act to a person only if such person submits a written application to the Secretary of Agriculture within five years after the date of the enactment of this Act, together with such proof of title as the Secretary may consider appropriate.

SEC. 3. (a) For purposes of this Act, the term "1957 recorded surveyor's map", used with respect to the Kyburz Mountain Resort Unit Numbered 1 Subdivision, refers to the map of such subdivision which was filed in the Office of the County Recorder, El Dorado County, California, on October 3, 1957.

(b) For purposes of this Act, the Kyburz Mountain Resort Unit Numbered 1 Subdivision, El Dorado County, California, consists of a portion of the northwest quarter of section 27, and the northeast quarter of section 28, township 11 north, range 15 east, Mount Diablo Meridian, more par-

ticularly described in book 4, page 57, and book 5, page 41, of the El Dorado County Records of Survey.

SEC. 4. Subject to valid existing rights, all mineral interests retained by the United States pursuant to section 1(b)(2) of this Act are hereby withdrawn from all forms of entry or appropriation under the mining laws and from the operation of the mineral leasing laws of the United States.

Union Calendar No. 116

97TH CONGRESS
1ST SESSION

H. R. 2820

[Report No. 97-168]

A BILL

To provide that certain lands constituting part of the El Dorado National Forest be conveyed to certain persons who purchased and held such lands in good faith reliance on an inaccurate surveyor's map.

JULY 9, 1981

Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

II

97TH CONGRESS
1ST SESSION

S. 1501

Entitled the "Educational Mining Act of 1982".

IN THE SENATE OF THE UNITED STATES

JULY 17 (legislative day, JULY 8), 1981

Mr. STEVENS (for himself and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

Entitled the "Educational Mining Act of 1982".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the conditions and limitations specified in this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized and directed to convey to the University of Alaska, all right, title, and interest of the United States in the following described land comprising approximately seventy-six acres:

FAIRBANKS MERIDIAN, ALASKA

Township 2 North, Range 1 East

Section 8:

East half southeast quarter southwest quarter northeast quarter southeast quarter,

North half southwest quarter southeast quarter northeast quarter southeast quarter,

South half south half southeast quarter northeast quarter southeast quarter,

East half northeast quarter northwest quarter southeast quarter southeast quarter,

Northeast quarter southeast quarter southeast quarter,

North half southeast quarter southeast quarter southeast quarter,

North half south half southeast quarter southeast quarter southeast quarter,

South half southeast quarter southeast quarter southeast quarter southeast quarter,

Section 9:

West half southwest quarter southwest quarter,

South half southwest quarter northwest quarter northeast quarter southwest quarter southwest quarter,

Southwest quarter northeast quarter southwest quarter southwest quarter southeast quarter southwest quarter southwest quarter,

West half west half southwest quarter southeast quarter southeast quarter southwest quarter,

Southwest quarter southeast quarter southwest quarter,

South half southwest quarter northwest quarter southeast quarter southwest quarter,

Section 16:

North half north half northwest quarter northwest quarter northwest quarter,

North half northeast quarter northwest quarter northwest quarter,

North half northeast quarter southeast quarter northeast quarter northwest quarter northwest quarter,

Northwest quarter northeast quarter northwest quarter,

North half northeast quarter southwest quarter northeast quarter northwest quarter,

North half northwest quarter southeast quarter northeast quarter northwest quarter,

West half northeast quarter northeast quarter northwest quarter.

SEC. 2. Conveyance under this Act shall be made only (a) upon the Secretary being satisfied that no valid mining claims exist on the described lands; and (b) upon the condition that the described land shall be held and used by the University of Alaska and shall not be conveyed by the university.

SEC. 3. No conveyance shall be made unless application for conveyance is filed by the university with the Secretary within six months of the date of the approval of this Act.

SEC. 4. The Secretary may at his discretion require that he be provided a perimeter survey of the described lands. All costs of obtaining such survey shall be borne by the university.

○

II

97TH CONGRESS
1ST SESSION

S. 1519

To designate certain national wildlife refuge lands.

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 8), 1981

Mr. TSONGAS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To designate certain national wildlife refuge lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) That certain lands known as North Cudjoe Key, Monroe County, Florida, which comprise approximately seventy-three acres, will be designated for purposes of the Wilderness Act (16 U.S.C. 1131–1136) as wilderness at the time those lands are included in the National Wildlife Refuge System, and shall become part of the existing "Florida Keys Wilderness".

91-534 O—82——4

SEC. 2. That notwithstanding any other provision of law, on the date that certain lands referred to as Racoon Key, Florida, comprising approximately twenty-five acres, and depicted on a map entitled "Florida Keys Wilderness and Great White Heron National Wildlife Refuge (West Part)" dated July 1975, are excluded from the National Wildiife Refuge System, they shall be excluded from the National Wilderness Preservation System.

SEC. 3. As soon as practical after this Act takes effect, the Secretary of the Interior shall file a map and legal description of the Florida Keys Wilderness with the Committee on Energy and Natural Resources of the Senate and the Interior and Insular Affairs Committee of the House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made. A map and legal description of the Florida Keys Wilderness shall be on file and available for public inspection in the Office of the Director, Fish and Wildlife Service, Department of the Interior.

SEC. 4. The lands designated by this Act as the Florida Keys Wilderness shall be administered in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the

Wilderness Act shall be deemed to be a reference to the effective date of this Act and, where appropriate, any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

○

97TH CONGRESS
1ST SESSION

S. 1767

To transfer certain lands in Clark County, Nevada, from the Department of Agriculture to the Frontier Girl Scout Council.

IN THE SENATE OF THE UNITED STATES

OCTOBER 22 (legislative day, OCTOBER 14), 1981

Mr. CANNON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To transfer certain lands in Clark County, Nevada, from the Department of Agriculture to the Frontier Girl Scout Council.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is authorized and directed to convey by quitclaim deed, subject to valid existing rights and such conditions as the Secretary of Agriculture shall prescribe, to the Frontier Girl Scout Council of Nevada, without consideration, the right, title and interest to approximately 15 acres of land in Clark County, Nevada, described as follows: Southwest quarter section 11, township 19 south, range 56 east, Mount Diablo baseline and meridian.

O

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 1767, a bill "To transfer certain lands in Clark County, Nevada, from the Department of Agriculture to the Frontier Girl Scout Council."

We defer to the Department of Agriculture as to the advisability of the bill's enactment.

S. 1767 would direct the Secretary of Agriculture to convey to the Frontier Girl Scout Council of Nevada, by quitclaim deed, approximately 15 acres of land in Clark County, Nevada, currently under the jurisdiction of the U.S. Forest Service. The conveyance would be subject to valid existing rights and such conditions as the Secretary of Agriculture may prescribe.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Garrey E. Carruthers

Assistant SECRETARY

97TH CONGRESS
1ST SESSION

H. R. 1528

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 16), 1981
Read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To provide an exception to the requirements of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), with regard to certain lands in Riverside County, California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso in the paragraph entitled "FOR GENERAL EXPENSES OF THE GEOLOGICAL SURVEY:" in section 1 of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), shall hereafter be inapplicable to lands in section 18, township 2 south, range 4 east, San Bernardino meridian, Riverside County, California, that were conveyed by the United

States by patent numbered 969694, patent numbered 844747, and patent numbered 657564.

SEC. 2. The reservation to the United States of rights-of-way for ditches and canals constructed by the authority of the United States, recited in patents listed in the first section of this Act shall be of no further force and effect with regard to the lands covered by those patents.

Passed the House of Representatives April 6, 1981.

Attest. EDMUND L. HENSHAW, JR.,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 18 1981

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We wish to submit the views of this Department on H.R. 1528, a bill "To provide an exception to the requirements of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), with regard to certain lands in Riverside County, California," passed by the House of April 6, 1981.

We recommend that the bill not be enacted.

H.R. 1528 would make the requirement for the reservation of the ditches and canals contained in the Act of August 30, 1890 (43 U.S.C. 945), inapplicable to lands in one section in California which were conveyed by United States patents numbered 969694, 844747 and 657564. The bill would also declare the reservation in these patents to the United States, of rights-of-way for ditches and canals, to be of no further force and effect with regard to the lands covered by the patents.

The bill is in effect a private relief bill involving a situation which is general in nature and applies to much of the land in the West. The bill would address only three patents although the reservation of ditches and canals appears in most public land patents after 1890.

The Act of August 30, 1890, required that all patents issued by the United States after August 30, 1890, west of the one hundredth meridian, contain an express reservation of a right-of-way for ditches and canals constructed by the authority of the United States. This reservation is presently a standard provision in all public land disposals. Apparently, the encumbrance imposed on property ownership by the ditches and canals reservation is objectionable to title companies and financial institutions. In the past, title companies have refused to insure title, and lenders have been reluctant to loan money on property subject to this reservation.

Recent experience has shown that a letter of probability of use has satisfied prospective lenders in similar situations where the reservation was interfering with the obtaining of financing. In addition, legislation already exists which provides protection to property owners. The Act of September 2, 1964 (78 Stat. 806), as amended by the Act of October 4, 1966 (80 Stat. 873), requires payment by the Water and Power Resources Service (formerly, Bureau of Reclamation) for use of privately owned land pursuant to the reservation.

While there are no known projects existing or anticipated that would be affected by the removal of the subject reservation, enactment of H.R. 1528 would represent a piecemeal approach to a general problem and could lead to numerous requests for similar bills.

We recommend that necessity for the continuation of the Act of August 30, 1890, be studied to determine whether its provisions are still meaningful. If the reservation is considered no longer needed, the law should be repealed and provision made to remove the reservation from all patents rather than from just a few. In any such repeal legislation care must be taken to safeguard those ditches and canals previously constructed or approved, and to reflect the needs and recommendations of the Water and Power Resources Service.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Under SECRETARY

97TH CONGRESS
1ST SESSION

H. R. 1543

To confirm a conveyance of certain real property by the Central Pacific Railway Company and Southern Pacific Company to A. C. Taber and his wife, Mary Taber.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 16), 1981

Read twice and referred to the Committee on Energy and Natural Resources

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AN ACT

To confirm a conveyance of certain real property by the Central Pacific Railway Company and Southern Pacific Company to A. C. Taber and his wife, Mary Taber.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to section 3 of this Act, the conveyance described in section 2(a) of this Act involving certain real property in Alameda County, California, is hereby confirmed in the successors in interest to A. C. Taber and his wife, Mary Taber, the grantees in such conveyance, with respect to all interests of the United States in the rights to the real proper-

ty described in section 2(b) of this Act. Portions of the real property described in section 2(b) formed part of the right-of-way granted to the Union Pacific Railroad by the United States by the Pacific Railroad Act of 1862 (12 Stat. 489).

SEC. 2. (a) The conveyance confirmed by this Act was made by a deed dated October 29, 1942, by the Central Pacific Railway Company and Southern Pacific Company to A. C. Taber and his wife, Mary Taber, and recorded on November 5, 1942, book 4297, page 388, Alameda County records.

(b) The real property referred to in the first section of this Act is certain real property in Alameda County, California, described as follows:

All that portion of the 400-foot right-of-way of the Central Pacific Railway Company in section 7, township 4 south, range 1 east, Mount Diablo base and meridian, lying south of the southerly line of the right-of-way of the State highway and north of a line that is parallel with and 25 feet at right angles, northerly from the center line of the main track of the Western Pacific Railroad Company, as now located, excepting therefrom that portion conveyed to the Department of Public Works of the State of California by condemnation recorded November 1944, book 4625, page 186, instrument Numbered RR–69436, Alameda County records.

SEC. 3. (a) Nothing in this Act shall—

(1) except to the extent specified in section 2 of this Act, diminish the right-of-way referred to in the first section of this Act to a width of less than 50 feet on each side of the center of the main track or tracks established and maintained by the Central Pacific Railway Company, Southern Pacific Company, or their predecessors in interest, on the date of the enactment of this Act; or

(2) validate or confirm any right or title to, or interest in, the land referred to in the first section of this Act arising out of adverse possession, prescription, or abandonment, and not confirmed by conveyance by the Central Pacific Railway Company or Southern Pacific Company before the date of the enactment of this Act.

(b) There is reserved to the United States all oil, coal, or other minerals in the land referred to in the first section of this Act, together with the right to prospect for, mine, and remove such oil, coal, or other minerals under such rules and regulations as the Secretary of the Interior may prescribe.

Passed the House of Representatives April 7, 1981.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By W. RAYMOND COLLEY,
Deputy Clerk.

97TH CONGRESS
1ST SESSION

H. R. 2475

IN THE SENATE OF THE UNITED STATES

DECEMBER 15 (legislative day, NOVEMBER 30), 1981

Read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To modify a withdrawal of certain lands in Mono County, California, to facilitate an exchange for certain other lands in Mono County, California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the Act of March 4, 1931 (46 Stat. 1530–1548), or any other provision of law, the following described lands, situated in Mono County, California, and comprising 202.167 acres, are withdrawn from settlement, sale, location, or entry, under all of the general land laws: The southeast quarter of the southeast quarter of section 23, the west half of the northwest quarter of section 25, and the north half of the northeast quarter of section 26, all in town-

ship 5 south, range 32 east, Mount Diablo meridian, California.

SEC. 2. Notwithstanding the first section of the Act of March 4, 1931 (46 Stat. 1530, 1532), the withdrawal accomplished by said Act of March 4, 1931, of the lands described as the southwest quarter of section 34, township 5 south, range 33 east, Mount Diablo meridian, comprising approximately 160 acres, situated in Mono County, California, is hereby modified to the extent that the lands described in this section may be exchanged by the Secretary of the Interior in accordance with the directive contained in section 3 of this Act.

SEC. 3. Notwithstanding any other provision of law, the Secretary of the Interior is hereby authorized to exchange the Federal lands described in section 2 of this Act for the lands described in section 1 of this Act, the title to the lands to be acquired by the United States to be satisfactory in all respects to the Secretary and to be conveyed by a good and sufficient deed, in recordable form, that is satisfactory to the Secretary.

Passed the House of Representatives December 15, 1981.

Attest: EDMUND L. HENSHAW, JR.,
Clerk.

By THOMAS E. LADD,
Assistant to the Clerk.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 25 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on H.R. 2475, an act "To modify a withdrawal of certain lands in Mono County, California, to facilitate an exchange for certain other lands in Mono County, California, and for other purposes."

We strongly support enactment of H.R. 2475 with the technical clarification discussed below.

H.R. 2475 would withdraw certain described lands, totaling approximately 202.2 acres, in Mono County, California, from the operation of the general land laws. The bill would also revoke the withdrawal of certain other described lands in Mono County, which total approximately 160 acres, and comprise a portion of the lands originally withdrawn by Act of Congress on March 4, 1931 (46 Stat. 1530), in order to facilitate an exchange of such lands.

Enactment of H.R. 2475 would permit an exchange of lands to protect the Owens River Pupfish, a Federally listed endangered species. Private land, which contains habitat of the pupfish, has been offered in exchange for public lands which are part of the 160 acres withdrawn under the Act of March 4, 1931. The 1931 withdrawal may be revoked only by Act of Congress according to section 204(j) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2754; 43 U.S.C. 1714(j)). If the act is passed, the described withdrawn land would be restored to the operation of the public land laws and exchanged for the land to be protected as habitat for the endangered species. Once the exchange is effected, the land acquired in the exchange would be automatically withdrawn under H.R. 2475 under the terms of and for the same purposes as the withdrawal created by the Act of March 4, 1931.

The proposed withdrawal site is approximately 10 miles due north of Bishop, in Mono County, California. The property is located in a wetland area adjacent to, and therefore part of, Fish Slough, a tributary to McNally Canal, which later feeds an aqueduct parallel to the Owens River. The drainage area upstream of the property is approximately 15 square miles, and is composed of numerous perennial streams immediately upstream of the wetland area.

It is our understanding that the Los Angeles Department of Water and Power supports the exchange that this act would permit, as do the California Department of Fish and Game, the University of California and the Owens Valley Interagency Committee.

The Bureau of Land Management is prepared to carry out the exchange, having completed the environmental assessment, appraisals, exchange agreement, and

other reports. We therefore strongly support enactment of H.R. 2475. We would like to clarify two aspects of the act, however. First, we would like to point out that the lands described in the first section of the act are presently patented and in private ownership. The purpose of this section is to assure that when these lands are acquired by exchange, they will automatically be withdrawn under the act. Second, we note that the withdrawal under this section would be from "settlement, sale, location, or entry, under all of the general land laws . . . ." In order to clarify that the lands would also be closed to mineral location, we recommend that the phrase "including the mining laws" be inserted on page 1, line 7, after the words quoted above.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Garrey E. Carruthers

Assistant SECRETARY

I

Union Calendar No. 222

97TH CONGRESS
1ST SESSION

H. R. 2863

[Report No. 97-359]

To authorize the Secretary of Agriculture to sell the portion of the Tahoe National Forest known as Blythe Arena.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1981

Mr. CHAPPIE introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

DECEMBER 4, 1981

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize the Secretary of Agriculture to sell the portion of the Tahoe National Forest known as Blythe Arena.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That the Secretary of Agriculture may sell~~ *That notwithstanding any other provision of law, the Secretary of Agri-*

91-534 O—82——5

culture may dispose of by exchange pursuant to the General Exchange Act of March 20, 1922, as amended (16 U.S.C. 485, 486) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716, 1717) or by sale at public auction, for not less than fair market value, all right, title, and interest in the approximately ~~5.22~~ *5.2* acres of land which is known as Blythe Arena and located in the Tahoe National Forest, *which is an exception to land patent numbered 04–70–0146,* and which is depicted on a map entitled "Blythe Arena Sale or Exchange Proposal", dated February 1981, on file in the office of the Chief, Forest Service, Department of Agriculture.

~~SEC. 2. There is authorized to be appropriated for the acquisition, by the Secretary of Agriculture, of lands in the State of California an amount equal to the amount of any proceeds received from the sale of Blythe Arena under the first section of this Act. Lands acquired with funds appropriated under the preceding sentence shall be permanently reserved, held, and administered as part of the national forest system.~~

SEC. 2. If the Secretary of Agriculture disposes of the land described in section 1 of this Act by sale, the proceeds shall be retained by the Secretary and shall be used for acquisition by the Secretary of lands in the State of California which shall be included within the national forest system and shall be permanently reserved, held, and administered as part of such system.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 2 5 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on H.R. 2863, an act "To authorize the Secretary of Agriculture to sell the portion of the Tahoe National Forest known as Blyth Arena."

We defer to the Department of Agriculture as to the advisability of the bill's enactment.

H.R. 2863 would authorize the Secretary of Agriculture to dispose of approximately 5.2 acres of land known as Blyth Arena in the Tahoe National Forest, by exchange or sale for not less than fair market value. If the disposal is by sale, the proceeds would be retained by the Secretary of Agriculture and used to acquire lands in California for inclusion in the National Forest System.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Garrey E. Carruthers

Assistant SECRETARY

Senator WALLOP. Senator Warner?

Senator WARNER. No, thank you.

Senator WALLOP. Mr. Myers, thank you for your indulgence. We will proceed with your testimony.

STATEMENT OF ROBERT E. MYERS, STATE LAND SURVEYOR, STATE OF MISSOURI, ON BEHALF OF THE AMERICAN CONGRESS ON SURVEYING AND MAPPING, ACCOMPANIED BY WILLIAM A. RADLINSKI, EXECUTIVE MANAGER OF THE COUNCIL OF MAPPING, PHOTOGRAMMETRY, AND SURVEYING SOCIETIES; KATE BOYCE, ATTORNEY AT LAW; AND JOHN PALATIELLO, STATE OF MISSOURI

Mr. MYERS. Thank you, Mr. Chairman, members of the subcommittee, I am Robert Myers, the State land surveyor for Missouri. I have held that position for the last 11 years, and prior to that I was a professional surveyor in private practice for about 20 years.

I would like to introduce the members at the table with me. To my immediate left is Mr. Bill Radlinski. He is the executive manager of the Council of Mapping, Photogrammetry, and Surveying Societies.

On his left is Kate Boyce; on my right, John Palatiello. I am testifying today on behalf of the American Congress on Surveying and Mapping, the American Society for Photogrammetry, and its 48 affiliate State societies. Together we represent more than 26,000 surveyors across the country. Our members are engaged in the professions of surveying, mapping, remote sensing, photogrammetry, and cartography.

ACSM and ASP congratulates Senator Domenici for introducing S.706, and commend you, Mr. Chairman, for having this hearing. We strongly support this bill, although there are several changes we would like to see, some of which are included in the House version, H.R. 4399.

Let me point out that the comments the subcommittee receives from the administration are both based on S. 706 as introduced. The progress is moved somewhat further with modifications in H.R. 4399, and further changes to the House bill as a result of discussions with BLM and the Forest Service. I would like to describe the type of problem that has confronted some of our private homeowners.

In the early 1970's, the Corps of Engineers contracted with the Bureau of Land Management for survey in the Shelbyville Reservoir area. They were to delineate the boundaries of the property which the Corps of Engineers was acquiring. They came in in the early 1970's and surveyed that property. In 1972, they completed monumentation of their survey and left the area. Everyone in the area, including the Corps of Engineers, and the private surveyor and private owners considered this monumentation to be correct.

In 1978 the Bureau of Land Management survey crews returned to the area and began to move some of the monumentation, some as much as 75 to 80 feet. You can imagine what happened. This caused a great deal of turmoil. Some of the new lines ran through the middle of houses that had been constructed, placed on the old monumentation. This was the first survey, the first survey was an

unimproved survey that had not really been formally completed. Some 10 years later in 1982 the final survey was completed. This legislation with a few modifications which we spelled out would have avoided this situation by requiring that the survey be completed in a timely fashion.

This is only one case of a number of cases. Senator Wallop, I think you have had a situation in the Simboi National Forest about 10 years ago, very similar. Senator Domenici had one in Lincoln National Forest in New Mexico, very similar. I guess it is the one that really spawned this legislation.

We have the same situation in Missouri, and I imagine there are probably other cases that you know about as a result of some of your actions today.

S. 706 also addresses the need for leadership in determining the feasibility of a multiple purpose cadastre, not the development cadastre, but a conduct of a feasibility study for that cadastre. ACSM strongly supports this concept. An important modification would encourage contracting with private surveying firms to provide increased capacity for surveying of Federal lands.

Mr. Chairman, the Reagan administration and many elected officials from the Western States such as yours are dedicated to the policy of proper stewardship of our public lands. We strongly support that effort. As one who works in State government and is involved with both State and Federal surveys, I can appreciate the need for accurate and timely surveys.

We believe that S. 706 and the modifications we have suggested are an important part of a good stewardship policy. Mr. Chairman, ACSM deeply appreciates the opportunity to testify on S. 706. We are confident that the changes we have suggested are in the best interest of the users of our land, private property owners, and Federal agencies, and ultimately, the taxpayers.

We appreciate your consideration of our views and we will be glad to answer any questions you might have.

[The prepared statement of Mr. Myers follows:]

ACSM
AMERICAN CONGRESS ON SURVEYING AND MAPPING

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TESTIMONY
OF
ROBERT E. MYERS
FOR THE
AMERICAN CONGRESS ON SURVEYING AND MAPPING
ON
S. 706 THE FEDERAL LAND SURVEY ACT

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER

FEBRUARY 11, 1982

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(1)

Mr. Chairman, members of the Subcommittee, I am Robert E. Myers, State Land Surveyor for the State of Missouri, Department of Natural Resources. I have held that position for 11 years and before that I was in private practice as a professional surveyor for 20 years. I am testifying today for the American Congress on Surveying and Mapping and its affiliate, the American Society of Photogrammetry. Together we represent more than 19,000 professionals and have an additional 16,500 members in 48 affiliated state associations. Our members are engaged in the professions of surveying, mapping, remote sensing, photogrammetry and cartography.

ACSM and ASP commends Senator Domenici for introducing S. 706 and commends you, Mr. Chairman, for holding this hearing. We strongly and enthusiastically support this bill, and would like to comment on it as well as several changes we would like to recommend, including some contained in the House bill, H.R. 4399.

These changes, which I will discuss in a moment, are the result of consultations with the Bureau of Land Management (BLM) and the Forest Service, the Federal agencies most affected by this legislation. We believe they are constructive changes, designed to foster cooperation between the surveying profession and the agencies which will carry out this legislation.

Let me point out that the comments this subcommittee receives from the Administration are based on S. 706, as introduced. The process has moved much further, with modifications made by H.R. 4399 and further changes to the House bill, developed as a result of our consultations with BLM and the Forest Service. We hope that when reviewing the Administration's views, the subcommittee will take into account the fact that these modifications have been negotiated and that it is our understanding that BLM could support the bill

with these changes.

First, I would like to describe the purpose of the Federal Land Survey Act and the problems that gave rise to its introduction. The purpose of S. 706, as introduced, is to promote harmony and cooperation between the Federal government and private and State landowners, and to facilitate more timely conduct of surveys and resurveys of Federal lands. The legislation also calls for a feasibility study to determine whether a "multipurpose cadastre" should be established to coordinate the many varieties of land data and eliminate duplication of such data. The bill's requirements for more timely conduct and completion of Federal surveys, together with the cadastre feasibility study, will help provide an essential framework for implementation of existing Federal land management programs, including any public or private relief bill dealing with land conveyances.

As this subcommittee is well aware - and even today is hearing testimony on land conveyance proposals prompted in part by boundary disputes - the Federal government's programs for land surveys and resurveys have had their share of problems. For the last 15 to 20 years particularly, a major Federal effort has been underway to conduct surveys of lands controlled by the BLM, the Forest Service, the Bureau of Indian Affairs, Corps of Engineers and others. Many of these surveys are conducted in the framework of the U.S. Public Land Survey System. Over the years, original government corners that are the basis of this land survey have become difficult or impossible to locate. The BLM, which has the major Federal responsibility for surveying, often has had to have its surveyors reconstruct, from the original survey notes, the location of these

original government corners. When these government corners cannot be found, BLM must reestablish them according to specified procedures. It then remonuments the corners and reviews and approves the resultant survey.

Often local private surveyors and landowners utilize these survey monuments prior to final approval, particularly when these "temporary" monuments have been in the ground as long as twenty years. The U.S. Forest Service, Corps of Engineers and other agencies for whom the BLM has executed the surveys, generally must use the survey monumentation long before BLM approves it. The delay, as you can imagine, has caused considerable problems in acquisition and maintenance of property boundaries.

Recently, citizens of Lincoln and Otero Counties in Southeastern New Mexico found their property titles were affected adversely as a result of Federal land surveys executed by the BLM for the U.S. Forest Service. Residents in the area of the Shelbyville Reservoir in Illinois faced a similar problem when Federal monuments on which they had relied for many years were suddenly declared "unapproved" and moved from their long-standing positions. The public and the Corps of Engineers had relied upon this monumentation for the acquisition of land for the Shelbyville Reservoir. Local surveyors had relied upon the monuments for the delineation of private lands adjoining the new reservoir. In 1979, the BLM moved the monuments, as much as 75 feet from the location previously established in the early 1970's. There also were cases in which the new boundary lines ran across a landowner's home or other structure. Local private surveyors had to declare a moratorium on all survey work in that area and land title insurance companies expressed deep concern.

You may recall, Mr. Chairman, a similar situation which existed in the

Medicine Bow National Forest in Wyoming. About ten years ago, the Forest Service conducted a survey of a subdivision of the forest and found numerous errors in the property lines and boundaries. Between 100 and 150 feet of land was taken from several Wyoming private property owners as a result of that new survey.

In my own State of Missouri, as well as elsewhere throughout the United States, similar land boundary problems have resulted from the untimely nature of BLM's final approval of Federal surveys. In addition, many corners have been reestablished using procedures that are inconsistent with State statutes, thus creating a conflict between corners established by the Federal government and those established by local land surveyors.

All of these activities adversely affect private ownership which adjoins Federal lands as well as the relationship between the Federal agencies and the land-owning public and States.

Problems such as these could have been avoided had BLM reviewed and accepted the Federal surveys within a reasonable time frame. However, it is almost the rule, rather than the exception, that the surveys are started and monumentation is placed on the land boundaries, but the resultant surveys are not checked and approved for long periods of time, in certain instances, up to twenty years.

S. 706 addresses the problem by specifying time frames for the notice, execution and acceptance of Federal surveys and resurveys. These surveys would have to be completed within two years and coordinated with certain state procedures when the survey affects private landowners. If certification did not occur in a timely manner, all temporary monuments would have to be removed and a plan for resurvey retracement initiated immediately.

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Another major purpose of this legislation is to provide national leadership in determining the feasibility of a "multipurpose cadastre," or land register, as a basis for improved land conveyance procedures. The idea of a multipurpose cadastre in many respects is not a new concept, but one which is being made possible as a result of modern technology. Information necessary for property evaluation purposes has been compiled by and for assessment officials for many years. Land recording offices have been the depository for information on land ownership, and have to provide each State a mechanism to regulate land transactions and resolve potential problems of entitlement. Planning commissions have collected information relating to zoning and land use potentials and responsibilities. Local governments have marshalled information on the location of sewer, water and other utility lines along with utility easements. The Census Bureau has collected valuable population information and other data. All of this information is related to its location on the ground, yet at present it is gathered independent of the other data. Generally this data cannot be inter-related through our current systems.

The multipurpose cadastre, however, would provide the framework for an organized system for coordinating land related information. Modern surveying and mapping technology would be used in conjunction with a computer system to afford tremendous savings by eliminating duplication of data collection efforts.

It is well recognized by assessors, governing officials, appraisors, insurers, lenders, surveyors, engineers, builders, developers and those who buy and sell land, that these pieces of data when correctly and adequately maintained, provide the basis for the wider management of our land related resources. Gradually the coordinated system also could improve land conveyance

procedures, make tax assessment more equitable, eliminate duplicative taxpayer costs for geographic data, and facilitate resource management and environmental protection.

A final point on the cadastre needs emphasis. S. 706 and the companion House bill H.R. 4399, provide only for a feasibility study - not the establishment of the multipurpose cadastre itself. Whether such a land register should be implemented is a decision at least three years hence, after the feasibility report has been submitted, with recommendations and legislative proposals, to the Congress for review.

ACSM has both public and private sector surveyors as members. Consequently, we have a strong interest in making certain that Federal surveying legislation accommodate the interest of both professionals in private practice and in public service.

For this reason, we have endeavored to work closely with BLM and the Forest Service to develop revised provisions to accomplish our goal of improved Federal survey procedures which will be mutually acceptable.

The following are the changes we would suggest as a result of our consultations with the agencies.

First, for the sake of clarification, certain terms should be defined.

The following definition of "survey" has been recommended: "a survey, resurvey or retracement which marks, defines, retraces or reestablishes the boundaries and subdivisions of the Federal lands of the United States." A definition of the type of lands to be affected by the legislation is also

essential. We urge that S. 706 be modified to apply to all "Federal lands" defined as "all lands administered and controlled by the Federal Government of the United States, including public lands as defined in 43 U.S.C. 1702(e), (commonly known as the Federal Land Policy and Management Act (FLPMA)) and acquired lands obtained by the Federal Government by purchase, condemnation, or gift under laws other than the public land laws."

Borrowing from the description in a 1980 National Academy of Sciences report entitled, "The Need for a Multipurpose Cadastre," and responding to concerns expressed by BLM, the cadastre's components might include: a reference frame consisting of a geodetic network; a series of current, accurate large-scale maps; overlay maps delineating all "cadastral parcels;" a unique identifying number assigned to each parcel that is used as a common index of all land records in information systems; and a series of land data files, each including a parcel identifier for purposes of information retrieval and correlation. The Secretaries of Interior, Commerce and Agriculture, together with the President of the National Academy of Science, would be required to assess the feasibility of establishing such a multipurpose cadastre and, within three years, submit a feasibility report with recommendations and any legislative proposals to the Congress for further action.

As to the bill's section on timely conduct of Federal surveys and resurveys, we endorse the modifications made in the House version, H.R. 4399, and recommend even a slight revision of those provisions to accommodate the concerns expressed by BLM and the Forest Service. These changes are designed to expedite the conduct of Federal surveys and resurveys so that they would be completed and accepted within two years of initiation and in compliance with applicable

(8)

State requirements, to the extent practicable, especially when the survey affects the rights of private landowners or is adjacent to private lands. (The House bill would require total compliance with all State laws which the agencies and ACSM agree would overly restrict administrative discretion in conducting Federal survey work.) All monuments placed in the ground would have to be marked as temporary until approved and certified. If no certification occurred within 90 days, the monument would have to be removed within 6 months. (This latter provision would relax significantly the requirement in the H.R. 4399, and is suggested in response to BLM's concern that weather conditions or other complications might impede temporary monument removal in any shorter period of time.)

Another important modification, embodied in H.R. 4399, would encourage the Secretaries of Interior and Agriculture or their designees to fulfill their requirements by contracting surveying with private entities licensed or registered to perform such surveying in the State or States in which the survey is conducted. The services of these professionals would be procured by surveying and mapping traditional negotiation procedures on the basis of the demonstrated competence, qualifications, and experience of the competitors. The purpose of this modification would be to ensure uniform application of the negotiation procedures that already are used by some Federal agencies to procure such professional services as architecture, engineering, surveying and mapping pursuant to Title 41, Subpart 1-4.1002 of the Code of Federal Regulations and consistent with Section 5-501 of the American Bar Association Model Procurement Code. The provision also would promote the general Federal policy set forth in OMB Circular A-76 (proposed for codification in Senate Joint Resolution 93, introduced by Senator Hayakawa) to contract with private sources

to the extent possible. Indeed, contracting out for surveying services was specifically recommended in the 1979 BLM report entitled, "Bureau of Land Management Organization and Management Review of the Cadastral Survey Program."

Legal authority granted by statutes, regulations and administrative procedures strongly supports use of negotiation procedures in contracting for surveying and mapping services on the basis of demonstrated competence and qualifications.

Professional surveying and mapping services are critical to a broad range of design endeavors related to the land and water, including all phases of construction, navigation, and resource management.

Surveyors and mappers play a crucial role in almost every Federal construction resource management project. The surveys and maps they develop become integral parts of the project planning and funding, real estate acquisition, engineering and design construction layout, and contract payment. The professional surveyor is the first person on the site and works closely with other professionals in site location, access to the project area and logistical planning. When the project is completed, the surveyor's field notes and drawings comprise the permanent record. The quality of surveying services is no less vital to the ultimate quality of construction than the quality of the construction documents produced by a design professional. In fact, the design is based upon the basic surveys and maps furnished to the design engineers. The point here is that the Federal agencies to the extent they can lawfully do so, should follow procedures that encourage top quality work. From a standpoint of cost and quality considerations, the exposure of the government if it does not award solely on the basis of qualifications is enormous.

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Mr. Chairman, the Reagan Administration and many elected officials from Western states, such as yourself, are dedicated to a policy of proper stewardship of our public lands. We support that effort. As one who works in State government and who is involved with surveys of both State and Federal lands, I certainly can appreciate the need for the Department of Interior and other stewards of the public lands to be a good neighbor with the states and with private property owners. I believe S. 706 and the amendments we have suggested are an important part of the good stewardship policy.

Mr. Chairman, the American Congress on Surveying and Mapping deeply appreciates this opportunity to testify on S. 706. We are confident the suggestions we have made are constructive and intended to make S. 706 a better bill. We believe the changes we suggested are in the best interest of the surveying and mapping profession, the users of our public lands, private property owners, Federal agencies and ultimately the taxpayers.

ACSM looks forward to working with you, Mr. Chairman, the members of this subcommittee, and your staff on this important legislation. We appreciate your consideration of our views and would be glad to answer any questions you may have.

Senator WALLOP. Thank you very much, Mr. Myers. We hope that—Senator Domenici has entered the room, and Pete, would you care to give your comments?

Senator DOMENICI. Mr. Chairman, I really would like to be with you for this important hearing but we are voting on the Clean Air Act and I am going to have to leave you.

Would you permit me to make a few observations?

Senator WALLOP. By all means, and your entire statement will be put in the record.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. First, Mr. Chairman, I want to thank you for holding this hearing on Senate bill 706, the Federal lands survey bill. If you will permit me, before I go into an explanation of the bill, I believe it is more important that I explain to you and the committee where the bill was introduced.

As you know, your State is much like mine. The Federal Government is the largest landowner in the country, and in the Western States. The Federal landholdings, in the simplest terms, are enormous. In my State, the Federal Government controls 34 percent of the land. I know in a State like Nevada it exceeds 87 percent which for some is an incredible statement of landholdings for the United States.

During this past decade, Federal agencies, not one but a number of them, have been conducting surveys on these holdings and because of the enormity of it, therein lies the problem. Originally surveys of these lands were complete and accurate to the degree that they could be for the time they were done, the degree that they could be accurate using the technology of that period of time.

However, today using new techology that is available, including the use of laser capability for accuracy, the error rate has been determined, and the degree of accuracy is just unbelievably increased. This in some ways has been a blessing and in other ways it has created a problem of enormous dimension.

Currently there are between 50,000 and 60,000 cases of disputed boundaries between the U.S. Forest Service and adjacent property owners. If one then includes similar disputes between the Bureau of Land Management and private property owners, the number of disputes becomes unmanageable, and this is only the beginning because realistically the resurveying of the Federal lands in this Nation has really only begun, so compounding this problem is the fact that in spite of our modern technological advances, some of the surveying was done incorrectly. In cases in my State in the late 1960's, a survey of just one national forest, the Lincoln National Forest, in southern New Mexico, was started and then abruptly ended when the Bureau of Land Management ran out of money to complete the survey.

What happened at that point was the start of a virtual Catch-22 situation. The portions of the survey that were completed were never certified nor recorded. In some cases, the survey was incorrect. Survey monuments were uncertified and those that were incorrectly placed were left in the field. Meanwhile, as life moved on

in the area, those areas surrounding the forest lands were bought and sold and surveys were conducted to verify titles, transfer these titles between private property owners, and of course, in many cases, those surveys were based on improperly placed survey monuments.

Now we find ourselves not only in New Mexico but other areas across the country attempting to extricate ourselves out of this mess. Currently I have before Congress another bill, Senate bill 705, the Small Tracts Act, which will help alleviate some of these problems which will be arising in the future, but the purpose of this bill is to develop a national policy that would encourage the timely notice, will encourage approval and recording of Federal land surveys because that is the normal way that people trace titles, and I have just described that we go through history where we have recording, and we have surveys that are half completed and not recorded, some inaccurate, some accurate, the Federal Government claiming title and boundaries based on them, yet if you look in the record you don't find any of that a matter of record.

By setting this new national policy, I believe we will promote and foster a spirit of cooperation with landowners, city and county and State governments. This will be another step in the establishment of a good neighbor policy with the citizens of the State where the Federal Government is such an enormous landowner, and I think we have all been worried about the lack of a good neighbor policy, and at least as it is perceived on the part of constituents and people.

I further believe that this bill will assist us in the stability and the permanence of the national records of surveys, and finally, it can provide a basis for a multipurpose national land information system.

We have over the years, as you know, Mr. Chairman, passed numerous laws requiring resource planning activities by Government agencies. The amount of land controlled by the Federal Government, especially in the West, makes these extremely important activities. The Federal Government's leadership responsibility in this area has been apparent for some years, even as the inadequacies of existing surveys, titles, and other land records often cloud the issue of the impact of Federal landownership. We are sometimes walking in a dark room as to the multitude of interrelationships that come about from this enormous Government landholding and the impact that that ownership has on not only private owners but also on cities, counties, and State governments.

Mr. Chairman, I do hope that you will continue to expedite these hearings. I know that there are some disagreements between the land people on this bill and some of the land managers in the country. Some of their suggestions are constructive, but what I do hope is that we move with dispatch to clarify these problems. I think they have got to be solved permanently. We can't go through another couple of decades of doing it halfway and then finding the kind of mess that we are in now and I thank you for calling the hearings and for permitting me to state my views. I can't overemphasize how just one county, based upon this one national forest, Mr. Chairman, what an enormous problem it has created in terms of the private landowners around it. It is really a major problem in

one part of our State and I am sure it is going to arise all over the West in large proportions.

[The prepared statement of Senator Domenici follows:]

STATEMENT OF SENATOR PETE V. DOMENICI

on S. 706 Before the
Public lands and Reserved Water
Subcommittee of the
Energy and Natural Resources Committee of the U.S. Senate

Mr. Chairman, I want to thank you for holding this hearing on S. 706 Federal Lands Survey Bill.

Before I go into explanation of the bill I believe it is more important that I explain why this bill was introduced.

As you know the federal government is the largest landowner in this nation. In the Western States the federal land holdings are, simply put, enormous.

In my state of New Mexico the Federal Government controls roughly 34 percent of the land. In Neveda that figure approaches 87 percent.

During the past decade federal agencies have been conducting surveys of these landholdings and therein lies the problem. Originally many of the surveys of these lands were completed and accurate to the degree that they could be accurate using the technology of yesteryear.

However, today, using new technology that is available including the use of lasers the capability for accuracy has been increased to a degree that is almost unbelievable.

This in some ways has been a blessing and in other ways has created a problem of enourmous dimensions. Currently there are some 50,000 to 60,000 cases of disputed boundaries between the U.S. Forest Service and adjacent property owners.

If one then includes similar disputes between the Bureau of Land Management and private property owners the number of disputes become unmanageable And this is only the beginning because realistically the re-surveying of the federal lands in this nation has only began.

Compounding this problem is the fact that in spite of our modern technological advances some of this resurveying was done incorrectly.

In the case of my state, in the late 1960's a resurvey of the Lincoln National Forest in southern New Mexico was started and abruptly ended when the Bureau of Land Management ran out of money to complete the survey.

What happened at that point was the start of a virtual "Catch 22" situation. The portions of the survey that were completed were never certified nor recorded. In some cases the survey was incorrect. Survey monuments, uncertified and incorrectly placed, were left in the field. Meanwhile as life moved on in the area surrounding this National Forest, land was bought and sold and surveys were conducted to verify titles and transfer these lands between private parties. And of course, in many cases those surveys were based on improperly placed survey monuments.

Now we find ourselves, not only in New Mexico, but in other areas across the country attempting to extricate ourselves out of this mess. Currently I have before this Congress another bill S. 705, The Small Tract Act, which will help alleviate some of these and problems arising in the future.

The purpose of this bill is to develop a national policy that will encourage the timely notice, conduct, approval and recording of federal land surveys.

By doing this I believe we will promote and foster a spirit of cooperation with landowners and city, county and state governments. This will be another step in our establishment of a "Good Neighbor" policy with the citizens of state where the federal government is such a large land owner.

I further believe this bill will assist in the stability and permanence of the Nation's records of surveys and finally it can provide a basis for multipurpose national land information system.

Congress has over the years passed numerous laws requiring resource planning activities by government agencies. The amount of land controlled by the federal government, especially in the Western States, makes these activities extremely important.

The federal government's leadership responsibility in this area has been apparent for some years, even as inadequacies of existing survey, title and other land records often cloud the issue of the impact of federal land ownership. We are sometimes walking in a dark room as to the multitude of interrelationships that come about from the magnitude of government land holdings, and the impact that ownership has on not only private property owners but also on city, county and state governments.

It is an undeniable fact that land data systems do and should exist to serve not only government, but also public and private institutions and most of all the private citizen.

Basically in summary I would state that S. 706 is urgently needed to resolve two serious federal suvery problems; first, the timeliness of survey actions; and second consistence and permanence of all survey work.

Because of these problems private owner's assets have been lost, and countless thousands of property titles have been clouded. In some cases these problems were compounded by the federal surveyor's lack of cooperation with landowners and their titles, records of surveys and maps in establishing whether bona fide rights acquired in good faith are valid and should be considered as an unchangeable original survey. Furthermore in some instances the federal surveyors do not conduct their survey in accordance with applicable state laws regulating land certification, corner recordation and platting.

In closing, enactment of this bill will improve the accelerate the conduct of federal surveys and resurveys and will assist the federal government in reducing the current backlog of outstanding survey.

Mr. Chairman, I believe the Senate and House should give their utmost consideration to S. 706 at the earliest possible date.

Again I thank you for the opportunity to testify today.

Senator WALLOP. Thank you. I am aware of some of the problems in your State. I am well aware of some of the problems in my State. One of the worst things about it is that private landowners are in a limbo. Their properties are clouded. They can't sell even if there was a market. Even in a booming economy they couldn't sell on speculation, and surely this is long overdue. I appreciate your leadership.

Senator DOMENICI. I will tell you another thing, Mr. Chairman. The people working for our National Government and for the managers, those that are out in the field working with our constituents, have an awful hard time because while there is great respect for our National Government, the notion that you can't have adverse possession against the king which is the evolution of our Federal domain, they can't understand that either because they all know that if they don't fence their property right and their neighbor has a fence up for *x* number of years, they own it, they are in trouble, and many of them have been doing that for decades on the national forests, and along comes the National Government and says there is a new boundary here and we didn't have to have any indications of it. You are just out of luck. That is really hard to take, and we have to solve that.

Thank you, Mr. Chairman.

Senator WALLOP. Thank you. I have no questions. I very much appreciate your testimony, Mr. Myers, and the subcommittee will begin just as quickly as the 2-week period is begun, and we will try to move your concerns along, the sponsors of the legislation.

Mr. MYERS. Thank you, Mr. Chairman. I did have a prepared statement.

Senator WALLOP. We will have that in the record, and I appreciate it. Thank you.

Next is Mr. Hinds on S. 982. Pleased to see you.

STATEMENT OF EUGENE HINDS, ASSISTANT COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. HINDS. Thank you, Mr. Chairman, and members of the subcommittee. My name is Eugene Hinds. I am the Assistant Commissioner for Planning and Operations for the Bureau of Reclamation. Commissioner Broadbent sends his regrets that he is unable to be here today, but we are appearing in support of S. 982, a bill to provide for the conveyance of certain Federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise project, Idaho, and I appreciate the opportunity to urge amendments to this bill which we believe will considerably enhance the fairness and acceptability of the bill and reduce the total cost to the United States.

The returning or placing of unneeded, underutilized Federal lands into private hands, thus returning it to the local tax rolls, is one of the prime goals of this administration, and it is an effort which we are proud to be a part of.

We are constantly inventorying our land areas to identify those parcels which are unneeded, or underutilized, and when unneeded or underutilized lands are identified, we take action to dispose of those parcels.

Now Senator Symms did a very adequate job in giving you the history, and with your permission I will skip that portion and get to the amendments.

S. 982 would provide for the adjacent landowner to the property to receive title to the land by paying a fair market value of the property and payment of certain administrative costs. The bill exempted those receiving the Federal land from reimbursing the Government for any costs of surveying and legal description preparation costs. We propose to amend section 2 of the proposed bill by deleting the words, "but excluding" and substituting in their place the word, "and."

This would make the second sentence of section 2 read: "Applicants for such conveyance must pay the fair market value of the lands as of the date of conveyance, including administrative costs and the cost to the Government of conducting the necessary land surveys and preparing the necessary legal descriptions to the land to be conveyed."

Senator WALLOP. I want to make certain that we don't get into the kind of thing that we got into in Montana with the Forest Service where we had the most outrageous bill. You may recall it had to do with something like $12,000 for a parcel of land that was worth $1,100. I can't remember the exact figures, but it was about sort of a 10 to 1 discrepancy, and I think that if the Government can't do it cheaper it might indulge in private enterprise and bid it or something, but if we are going to make that change on your recommendation, I want to make certain that there is some rational relevance between the cost of the survey and the survey costs that might otherwise accrue.

Mr. HINDS. We appreciate that, Mr. Chairman, and we have done a large amount of surveying there just to identify these lands, so I feel certain that the surveys that we have done are usable, and I can't give you exact costs because we don't know those at this time, but I feel certain that they will not be exorbitant and will not approach the cost of that parcel.

Senator WALLOP. I wonder if you might be able to provide the cost for the record?

Mr. HINDS. We will try to do that, yes, sir. We will get it back to you.

Senator WALLOP. Thank you.

Mr. HINDS. We also suggested that the bill be amended to correct an oversight. In addition to those people who own lands adjacent to Lake Shore Drive, there were four owners located along Orchard Drive who were similarly affected, and I believe that Senator Symms alluded to that in his statement.

We propose to change the bill's title to read: "Certain Federal Lands Adjacent to Orchard and Lake Shore Drives, Lake Lowell."

We also recommend changing section 1 of the bill to read—and this is just a partial bit of that: "* * * certain small tracts of Federal lands adjacent to Orchard and Lake Shore Drives, Like Lowell, Boise project," just to get Orchard Drive in there.

Again, thank you for the opportunity to discuss rectification of an injustice by transferring certain small tracts of Federal land to the adjacent landowners along Orchard and Lake Shore Drives,

Lake Lowell, Idaho, and to suggest amendments to your current proposal.

I would be pleased to answer any further questions you might have.

[The prepared statement of Mr. Hinds follows:]

STATEMENT OF THE ASSISTANT COMMISSIONER OF RECLAMATION WITNESS BEFORE THE SUBCOMMITTEE ON PUBLIC LAND AND RESERVED WATER OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. Chairman and members of the subcommittee, we are appearing today in support of S.982 a bill "To provide for the conveyance of certain Federal lands adjacent to Lake Shore Drive, Lake Lowell, Boise Project, Idaho," with amendments. I appreciate the opportunity to urge amendments to this bill which we believe considerably enhance the fairness and acceptability of this bill, and reduce the total cost to the United States.

The returning or placing of unneeded or underutilized Federal lands into private hands thus returning it to local tax roles is one of the prime goals of the administration, an effort of which we are proud to be a part. We in the Bureau of Reclamation and the entire department, are constantly inventorying our land areas to identify those parcels which are unneeded or underutilized. When unneeded or underutilized lands are identified we take action to dispose of these parcels.

Now I would like to give you some history which led up to the introduction of S.982. Early in this century the Reclamation Service, the forerunner of the Bureau of Reclamation, acquired lands south of Nampa, Idaho, for the construction of a reservoir on a canal fed by the Boise, River. In 1909 the Lake Lowell dam was constructed and the lake filled to its present capacity. By executive order in 1937 the Deer Flat National Wildlife Refuge was created on the Federal lands surrounding Lake Lowell.

When Lake Shore and Orchard Drive were constructed around Lake Lowell they did not follow the boundary of the federally acquired property. As a result of this, 33 parcels ranging in size from a fraction of an acre

to several acres were isolated from Deer Flat Wildlife Refuge. Over the years these parcels were incorporated into the adjacent farm operations. Occupancy of these small acreages were not contested by the Government largely due to the parcel size and rural location, although the issue of the precise boundary location did surface several times.

In the early to mid 1970's when a construction loan application raised the title issue on some of the land, the Bureau of Reclamation began a boundary retracement survey for the 29 parcels of land along Lake Shore Drive and the four along Orchard Drive. The 33 strips were formally removed from the National Wildlife Refuge and the Boise Project Office prepared the individual plats and legal descriptions necessary to dispose of the land.

The problem with proceeding to a direct disposal of this property lies with the authority of Reclamation to dispose of this property. Federal Regulations require that property with an appraised value in excess of $1,000 must be sold by the General Services Administration (GSA) on a sealed bid basis. This process would not ensure that the persons currently occupying the small parcels would be the successful bidders if the parcels were sold by GSA.

The present bill would provide for the adjacent landowner to the property to receive the title to the land by paying the fair market value of the property and certain administrative costs. The bill exempted those receiving the Federal land from reimbursing the Government for any surveying and legal description preparation costs. We propose to amend Section 2 of the proposed bill by deleting the words "but excluding" and

substituting in their place the word "and". This would make this part read "Applicants for such conveyance must pay the fair market value of the lands as of the date of conveyance, including administrative costs and the costs to the Government of conducting the necessary land surveys and preparing the necessary legal descriptions to the land to be conveyed."

We also suggested that the bill be amended to correct an oversight. In addition to those people who owned lands adjacent to Lake Shore Drive there were four owners located along Orchard Drive who were similarly affected. We propose to change the bill's title to read ". . . certain Federal lands adjacent to Orchard and Lake Shore Drive, Lake Lowell . . ." We also recommend changing Section 1 of the bill to read ". . . certain small tracts of Federal lands located adjacent to Orchard and Lake Shore Drive, Lake Lowell, Boise Project . . . ."

Again, thank you for the opportunity to discuss the rectification of an injustice by transferring certain small tracts of Federal land to the adjacent landowners along Orchard and Lake Shore Drive, Lake Lowell, Idaho, and to suggest amendments to your current proposal. I would be pleased to answer any questions you have.

Senator WALLOP. Thank you, Mr. Hinds. I appreciate your coming down here this morning, and offering us testimony in support of the concept of that. I think we can move along. I have no further questions other than the concern that I did express, and if you can provide us with some reasonable estimate of what that might be, we can take into account your suggested amendments. It may be that the amendments would be dependent upon the rationality of the price that is submitted.

Mr. HINDS. We understand that, and we will provide that to you.

[Subsequent to the hearing the Department of the Interior supplied the following:]

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, D.C., March 3, 1982.

Hon. MALCOLM WALLOP,
Chairman, Subcommittee on Public Lands and Reserved Water of the Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR SENATOR WALLOP: During our testimony of February 10, 1982, on Senate bill 982, "To provide for the conveyance of certain Federal lands, adjacent to Lake Shore Drive, Lake Lowell, Boise, Project, Idaho," we proposed an amendment to require those receiving the lands to pay survey and administrative costs of preparing the land for sale. These costs were in addition to the fair market value of the land. At that time, you requested that we obtain an estimate of these additional costs.

We estimate that the survey costs will be $500 per acre. The administrative costs are estimated to be $200 per acre. These are the maximum charges and, if our estimates are too high, we will reduce the charges accordingly.

The 61 acres involved are divided into 38 separate parcels ranging in size from 0.015 to 20 acres. Surveying this large number of tracts and preparing the descriptions runs up the total survey and administrative costs. The total per acre surveying and administrative costs may sound high, but when the number of individual tracts are considered, and by using a per acre charge to reduce the cost to individuals with small parcels, the costs and approach seem logical. The large parcels have subdivision potential and, therefore, can probably support higher charges.

If we can be of any further service, please contact us.

Sincerely yours,

ROBERT N. BROADBENT, *Commissioner.*

Senator WALLOP. Thank you very much, and the next witness is Mr. Gilmore, S. 1519.

Mr. GILMORE. Good morning, Mr. Chairman.

Senator WALLOP. Good morning.

Mr. GILMORE. I am Bob Gilmore.

Senator WALLOP. I appreciate your coming.

Mr. GILMORE. Thank you, sir.

Senator WALLOP. Also just for the record, I wanted to get in a word of thanks from a number of my people in Wyoming with regard to the control. It is very much appreciated out there.

Mr. GILMORE. Thank you, sir. We greatly appreciate those thanks. We have been working long and hard to try and get that program in the proper place, and we think we have got it there now.

Senator WALLOP. I think that given the basic spadework that has taken place, it is a program that will continue.

STATEMENT OF ROBERT GILMORE, ACTING DEPUTY ASSOCIATE DIRECTOR, NATIONAL WILDLIFE REFUGE SYSTEM, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. GILMORE. Thank you. I am Bob Gilmore. I am the Deputy Associate Director for Wildlife Resources in the Fish and Wildlife Service. I have a very brief oral statement, and I will submit the written statement for the record.

I appreciate the opportunity to testify today on Senate bill 1519. This bill would withdraw the refuge lands on Racoon Key from the wilderness system on the date that these lands are withdrawn from the National Wildlife Refuge System.

In addition, the bill would designate North Cudjoe Key as wilderness to be effective when it is included in the refuge system.

The administration supports enactment of Senate Bill 1519 to make the necessary changes in the wilderness status. We believe that the national interest would be served in terms of both public health and the National Wildlife Refuge System.

This concludes my oral statement. Of course, I would like to submit the written statement for the record, and I would be pleased to answer any questions.

Senator WALLOP. The statement will be included in the record.

[The prepared statement of Mr. Gilmore follows:]

STATEMENT OF ROBERT GILMORE, ACTING DEPUTY ASSOCIATE DIRECTOR, NATIONAL WILDLIFE RERFUGE SYSTEM, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER ON S. 1519, TO PROVIDE FOR CHANGES IN THE BOUNDARY OF THE FLORIDA KEYS WILDERNESS, FEBRUARY 11, 1982

Mr. Chairman, I appreciate the opportunity to testify today on S. 1519 and to discuss with you the situation at Raccoon Key in Monroe County, Florida.

The Great White Heron National Wildlife Refuge is composed of numerous islands in the Florida Keys. Two portions of Raccoon Key are included in this refuge: a 25-acre tract in the southwest section of the island and a quarter of an acre in the northeast. The larger tract was designated as part of the Florida Keys Wilderness in 1975 by Public Law 93-632.

On November 1, 1976, the Charles River Breeding Laboratories, Inc. purchased what the company believed to be an insured title for the entire Raccoon Key for fulfillment of a contractual agreement to supply rhesus monkeys to the Food and Drug Administration. In early 1977, facilities constructed by the laboratory were discovered by Fish and Wildlife Service personnel on the refuge portions of the island and an error in the company's title search was brought to light.

The laboratory purchased these lands for the propagation of rhesus monkeys essential for testing the safety of polio vaccine by the Food and Drug Administration's (FDA) Bureau of Biologics. This is a procedure required by Federal regulation and, because of physiological similarities of these monkeys to humans, there is no suitable alternative to their use. The need for domestic production of these animals became critical when India, virtually the world's only supplier, terminated exportation in 1978. An assured supply of rhesus monkey will

enable the United States to continue the vital polio immunization program with maximum safety.

Of the various colonies of rhesus monkeys being developed by U.S. suppliers, we understand that Raccoon Key has the greatest potential for sustained production. The method of achieving the required production level is with an uncaged colony numbering approximately 2,000 monkeys. However, without constant policing by Service personnel such a large, free-roaming population would eventually invade the refuge area, a situation not compatible with either refuge or wilderness objectives. The construction of a high fence stretching out into the water was rejected as an ineffective solution due to the monkey's ability to climb or swim around it as well as an unsightly addition to a wilderness area.

Under any other circumstances we would take aggressive action to prevent degradation of refuge and wilderness resources. However, in this case FDA impressed us with the need to move forward with this breeding project for the sake of the public's health. The laboratory had already invested much valuable time in developing plans and constructing facilities on the Key. In an effort to resolve the situation, the company agreed to purchase lands of equal value to Raccoon Key and transfer title to the United States for inclusion in the National Wildlife Refuge System. The laboratory has purchased title to a nearby 73 acre island, North Cudjoe Key, which they will exchange for our holdings on Raccoon Key plus a differential payment of approximately $66,000. Upon termination of the breeding project, the company will also convey title to the whole of Raccoon Key to the United States for use as a unit of the refuge system. Therefore, eventually all of

both islands, totaling 275 acres, will be under Fish and Wildlife Service jurisdiction, as opposed to the present 25 acres.

This land exchange is within the authority of the Secretary of the Interior under the National Wildlife Refuge System Administration Act, as amended. However, as you know, removal of Raccoon Key from the Wilderness System, as well as like designation of the land to be acquired on North Cudjoe Key, must be by an Act of Congress. S.1519 will withdraw the 25 acres on Raccoon Key from the Wilderness System on the date these lands are withdrawn from the National Wildlife Refuge System. In addition, the bill will designate North Cudjoe Key as wilderness, to be effective when it is included in the refuge system.

North Cudjoe Key, like Raccoon Key, is an undeveloped, uninhabited coral island covered with a heavy growth of mangroves. As with the refuge portion of Raccoon Key, most of North Cudjoe Key is under water at high tide. It does, however, have an area of high ground characterized by low-lying scrub vegetation. Herons, egrets, osprey and kestrels are common to both keys. Raccoons and marsh rabbits typically inhabitat these islands. The key deer, an endangered species, is a resident of Cudjoe Key, adjacent to North Cudjoe Key. Because Cudjoe Key has some high ground, it is likely that this diminutive white-tailed deer might occassionally be found there. Key deer have never been recorded on Raccoon Key.

The Administration supports enactment of S. 1519 to expedite the necessary changes in wilderness status. We believe that the national interest and well-being of the people of the United States would be served by allowing the rhesus monkey breeding program to continue. Furthermore, while 25 acres of Raccoon Key will be removed from the wilderness system, 73 acres will be added. North Cudjoe Key is not only larger, but has a greater variety of habitat types, so there will be more and better habitat in the refuge system than there is now.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions you might have.

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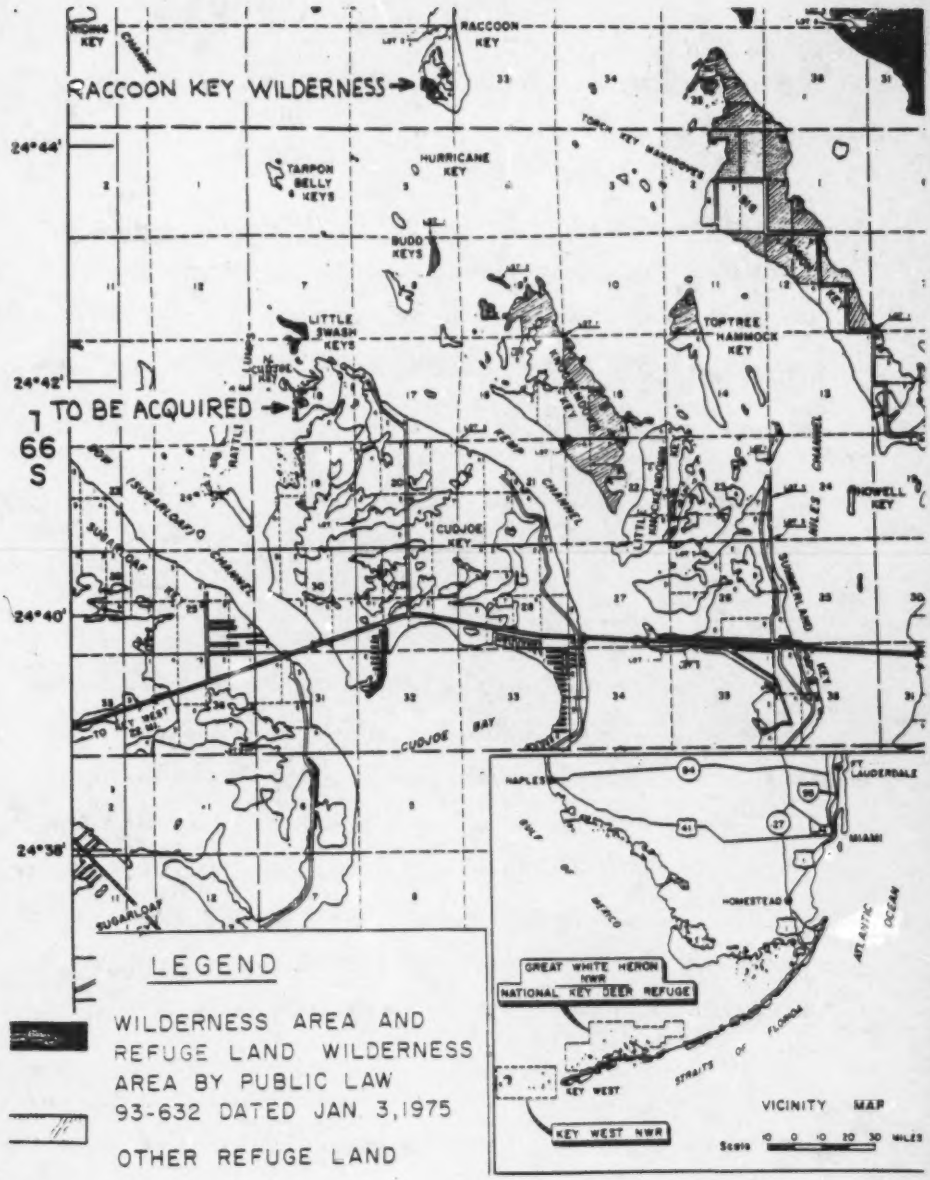
RACCOON KEY WILDERNESS
TO BE ACQUIRED
RACCOON KEY
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YARPON BELLY KEYS
BUDD KEYS
LITTLE SWASH KEYS
TOPTREE HAMMOCK KEY
CUDJOE KEY
CUDJOE BAY
SUGARLOAF KEY
HOWELL KEY
24°44'
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66
S
LEGEND
WILDERNESS AREA AND REFUGE LAND WILDERNESS AREA BY PUBLIC LAW 93-632 DATED JAN 3,1975
OTHER REFUGE LAND
GREAT WHITE HERON NWR
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KEY WEST NWR
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MIAMI
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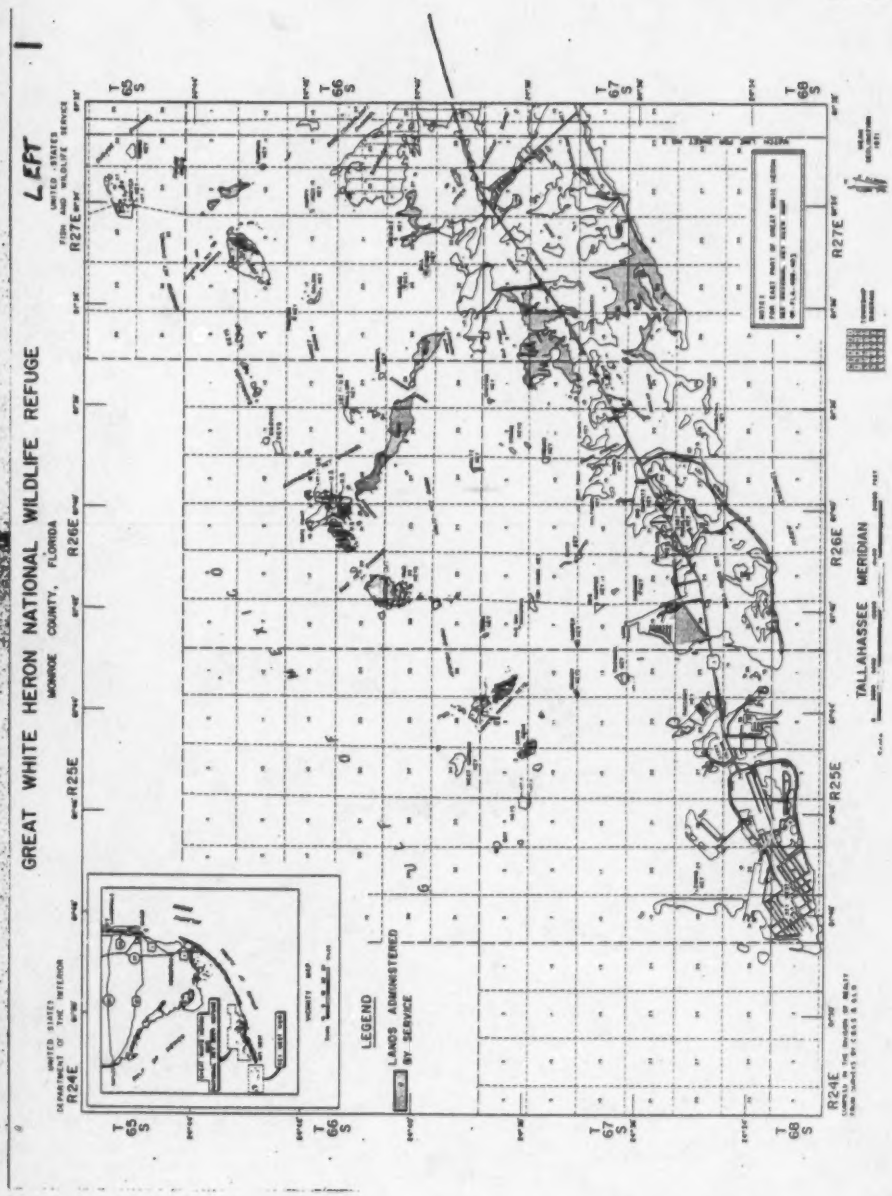
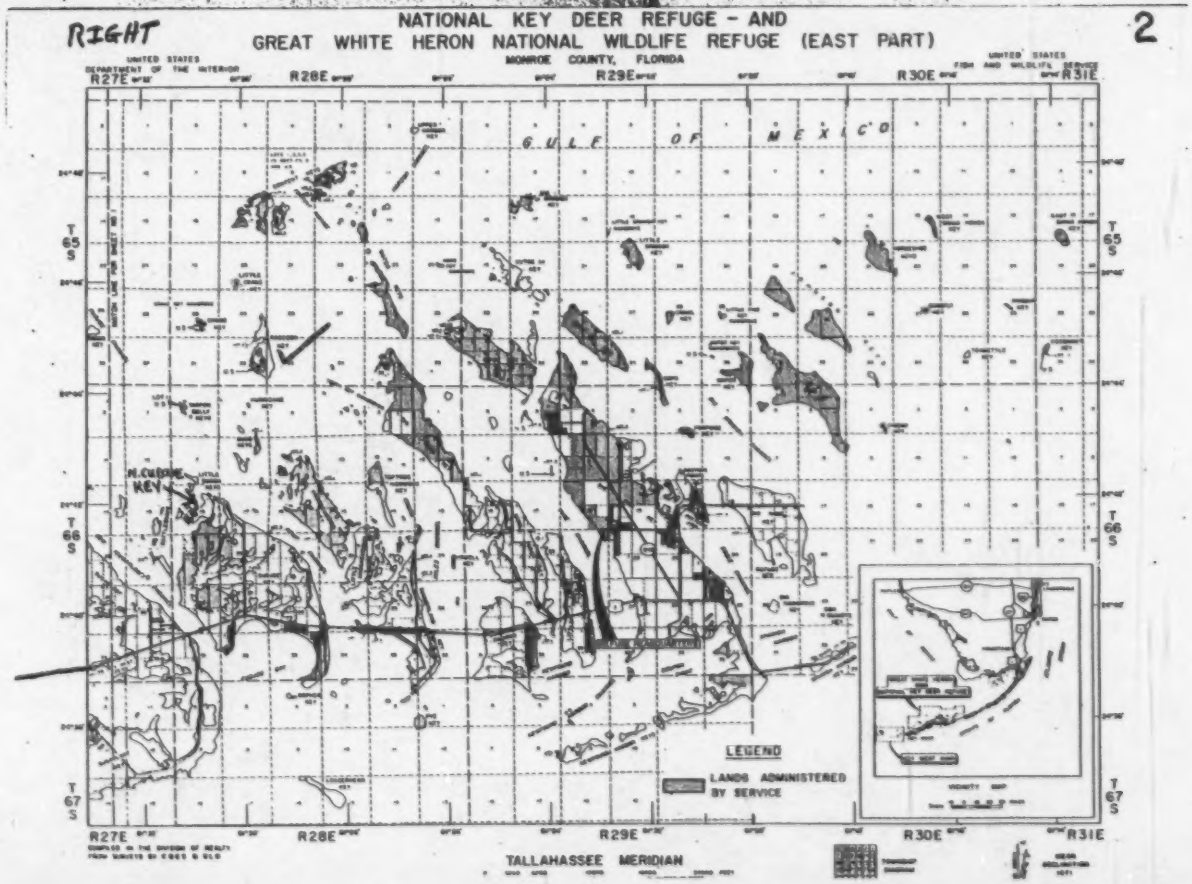
NAPLES
GULF OF MEXICO
ATLANTIC OCEAN
STRAITS OF FLORIDA
VICINITY MAP


GREAT WHITE HERON NATIONAL WILDLIFE REFUGE
MONROE COUNTY, FLORIDA
LEFT
LEGEND
LANDS ADMINISTERED BY SERVICE
TALLAHASSEE MERIDIAN
R24E
R25E
R26E
R27E
T 65 S
T 66 S
T 67 S
T 68 S

RIGHT

2


NATIONAL KEY DEER REFUGE - AND
GREAT WHITE HERON NATIONAL WILDLIFE REFUGE (EAST PART)
MONROE COUNTY, FLORIDA
UNITED STATES
DEPARTMENT OF THE INTERIOR
UNITED STATES
FISH AND WILDLIFE SERVICE
R27E
R28E
R29E
R30E
R31E
GULF OF MEXICO
T 65 S
T 66 S
T 67 S
N. CUDJOE KEY
LEGEND
LANDS ADMINISTERED BY SERVICE
TALLAHASSEE MERIDIAN

Senator WALLOP. I am interested to note with regard to some of your comments on what is contained in North Cudjoe Key, we may actually be picking up some national benefit with regard to wildlife.

Mr. GILMORE. Yes, sir, that is correct. North Cudjoe Key is approximately 3 miles south and east of Racoon Key, and the Charles River Lab people have already bought the Key, 73 acres as I recall. We are giving up 25 acres at Racoon Key, and as a result of that, we will have in addition to the wilderness system, the difference between 73 and 25.

The Service has agreed at this stage to reimburse Charles River Labs for the additional acres so when we get through, we will have an additional 40 some-odd acres in the refuge and wilderness systems. We also have the potential for Racoon Key coming back to the wildlife refuge in that location as part of the refuge. It may not qualify as wilderness when it comes back, but it will come back and be administered essentially like all the other keys in that area.

Senator WALLOP. I think the fact that you can provide within that system some habitats for the Key Deer which is according to your testimony an endangered species which has been on Racoon Key obviously relates well.

Mr. GILMORE. The potential for North Cudjoe Key providing the habitat is much more than we have opportunity for at Racoon Key.

Senator WALLOP. Thank you very much. I appreciate your coming down.

Now Ray Housley on S. 706, S. 1242, S. 1767, H.R. 2820, and H.R. 2863; Mr. Parks, why don't you come up here as well because your testimony gets a couple of extras. Ray, good morning, and welcome.

Mr. HOUSLEY. Good morning, Mr. Chairman. We appreciate this opportunity to offer the Department of Agriculture's views on this series of bills. I will discuss each of them separately and to some extent brief my testimony if that is your wish.

Senator WALLOP. By all means, that would be helpful, and all of it will be placed in the record in its entirety.

STATEMENT OF RAYMOND M. HOUSLEY, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. HOUSLEY. First on S. 1242, which is the same bill as H.R. 2820, directing the conveyance of lands in the El Dorado National Forest, Calif., to certain private landowners, we recommend that S. 1242 not be enacted. Instead we recommend that S. 705, the bill that would provide us general authority to resolve situations like those described in S. 1242, be enacted.

Senator WALLOP. That is the bill Senator Domenici referred to?

Mr. HOUSLEY. Yes, sir. We offer two reasons for our opposition to S. 1242. First, since the United States was not a party to and did not cause or create the overlap or encroachment, we strongly believe that the Government should receive current fair market value for any lands conveyed to a private party. We estimate the value of the land involved to be about $10,000 per acre.

Second, this bill seeks to resolve only one of a great number of similar cases existing or suspected on national forest lands involv-

ing good faith occupancy or encroachment. A few years ago, as Senator Domenici mentioned in his statement, we estimated that 50,000 title claim cases existed, a major portion of which are believed to be encroachments due to faulty private land surveys. The resolving of these cases on a case-by-case basis would result in significant time impact on both the Congress and our Department.

The legislation before the Senate, S. 705, if amended as we have proposed, would resolve these situations in a more expeditious and equitable manner, and at lower cost to all parties.

Moving to S. 1767 directing the Secretary of Agriculture to convey lands in the Toiyabe National Forest in Nevada to the Frontier Girl Scout Council, we recommend that S. 1767 not be enacted. The creation of a privately held enclave through conveyance of this property would complicate management of this national forest. Enactment of the bill would be inequitable to the many other holders of special use permits on national forest land who might desire similar treatment.

The Frontier Girl Scout Council has operated a summer camp at this site approximately 50 miles northwest of Las Vegas continuously since 1953. This is currently authorized by a special use permit issued by the Forest Service in 1968 which expires in 1988. An annual fee based on 2 percent of the appraised value is currently $420 a year. The area in question totals 1,500 acres located in a narrow canyon. It contains several structures and other improvements installed by the council under terms of the permit.

It is our understanding that this conveyance is sought so that the council may make repairs and major improvements to the camp. The council had earlier expressed the view that such work could not be justified unless the property was owned.

We suggest that the special use permit procedure fully recognizes the need for capital improvements and provides for terms of sufficient length to amortize those investments up to 30 years. In fact, we understand that one major improvement has just recently been undertaken and completed. Enactment of legislation requiring conveyance of Federal lands currently under permit without consideration would encourage holders of 500 similar permits to request the same treatment. It is our firm belief that the public interest is best served by retaining the land in public ownership and using the special use permit procedure to provide for use by the Girl Scouts.

We have worked with the council in recent months on this matter and we are confident that our continued contact will accommodate its concerns and thus avoid the need for special legislation.

On H.R. 2863 authorizing the Secretary of Agriculture to sell a portion of the Tahoe National Forest, Calif., known as the Blyth Arena, we support this legislation and urge that it be promptly enacted.

Blyth Arena is an ice skating facility that was constructed for the purpose of hosting world class ice skating events during the Eighth Winter Olympic games held in Squaw Valley, Calif., in 1960. Congress authorized the construction of the Blyth facility in the act of April 3, 1958 and the act of May 14, 1958. Upon conclusion of the 1960 Winter Olympic games, the arena continued operation as a training center for amateur ice skaters and for public recreational skating under permit to the State of California until

1974. Since then other parties have attempted to operate the facility but all have terminated their permits where the cost of operation exceeded income.

With the withdrawal of the United States Olympic Committee facility, the most recent operater suffered financial losses, and the skating facility was closed.

This legislation is needed because the acts which authorized construction of the facilities do not contain any provision for sale, exchange, or other means of disposal of the property. Disposal either through the proposed sale by auction or by exchange would eliminate the need for major Federal expenditures to either renovate, mothball, or obliterate the facility.

This proposed disposal has been discussed with the State of California and local authorities, the United States Olympic Committee and other interested parties. Their general response has been favorable.

Finally, on S. 706, the Federal Land Survey Act of 1981, because of a number of concerns which have been expressed regarding the provisions of S. 706, we recommend that the bill not be enacted and that a substitute proposal, which we are now developing with the Department of Interior and which will be sent to the committee shortly, be enacted instead.

We are concerned about the quality and timeliness of surveys of the boundaries of the National Forest System. There are about 272,000 miles of property lines within the 190-million-acre National Forest System. About 47,000 miles have been surveyed and marked to standard through 1981. The Department of Interior through the Bureau of Land Management has the leadership for the survey of Federal lands and performs some surveys of National Forest System lands as part of their overall responsibility.

In recent years, about 20 percent of the Bureau's survey program has been directed to surveys of National Forest System lands in the West. That proportion is somewhat smaller this year I understand.

Funds have also been transferred by the Forest Service to BLM, averaging about a million dollars annually, to make additional surveys of National Forest System boundary lines.

S. 706 would supplement existing authorities to survey Federal lands by requiring notification of affected public agencies and landowners when surveys are to be made and setting forth the timetable for completion of monumenting of the survey. We understand that the Department of the Interior has procedures now in place that would handle the notification and time schedule requirements set forth in the bill. We are of the firm opinion that notification provides landowners the opportunity to participate in boundary line location and lessens the possibility that a temporary line marking the Federal land boundary would be used as a permanent line by adjoining landowners.

The USDI procedures should adequately demonstrate the willingness of the Federal Government to conduct surveys in a cooperative manner with adjoining landowners.

We cannot support the bill's proviso calling for a feasibility study of a multipurpose national cadastre. Such a study would impose a substantial workload on those departments that would be involved in the study. Further, we believe that the proposal duplicates the

work of a similar nature underway by agencies of this Department. While we agree that the assessment of multipurpose national cadastre needs is a worthy objective, we suggest it should be pursued by those departments and agencies concerned as funds and availability of personnel permit.

Our major concern and the one that relates to section 3 of S. 706 is the prompt completion of National Forest System boundary surveys. We believe that the Department of Agriculture should have the authority to survey National Forest System lands where such authority now rests with the Department of the Interior. That Department has indicated its concurrence in this proposal, and is working with us to reallocate the surveying responsibilities between the two Departments.

We regret that we were not able to complete the development of this proposal in time to present it to the committee at this hearing, but we do expect to have a substitute bill to you shortly. We would expect to carry out these surveys of National Forest System lands under the overall guidance of BLM's "Manual of Instructions for the Survey of the Public Lands of the United States."

Mr. Chairman, that concludes my prepared statement.

[The prepared statement of Mr. Housley follows:]

STATEMENT OF
RAYMOND M. HOUSLEY, DEPUTY CHIEF, NATIONAL FOREST SYSTEM
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands and Reserved Water,
Committee on Energy and Natural Resources
United States Senate

Concerning Several Bills Affecting
National Forest System Lands

February 11, 1982

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for this opportunity to offer the Department of Agriculture's views on four bills that affect the lands of the National Forest System. We would like to discuss each of the bills separately.

S. 1242 (H.R. 2820)--Directing the Conveyance of Lands in the Eldorado National Forest, California, to Certain Private Landowners.

We recommend that S. 1242 not be enacted. Instead, we recommend that S. 705, a bill that would provide us general authority to resolve situations like those described in S. 1242, be enacted.

S. 1242 would direct the Secretary of Agriculture to convey to 11 private landowners all right, title, and interest of the United States to approximately 1.68 acres of lands within the Eldorado National Forest in El Dorado County, California, if this land is found to be part of an overlap on National Forest land caused by an erroneous private survey made in 1957. The private land in question is in the Kyburz Mountain Resort Unit No. 1 Subdivision. Surveys by the Forest Service in 1974

and in 1976 revealed that the boundaries of certain lots in the subdivision are 53 to 61 feet inside the boundary of the National Forest. Conveyance to the landowners would require submission of a written application with proof of title to the Secretary of Agriculture within 5 years of the date of enactment and payment of administrative costs incurred by the Government. Payment for the property would be required, proportional to the per-acre price existing at the time of the original purchase after the subdivision was established (1957). Mineral interests would be conveyed if the landowner desired but with payment at fair market value. If not conveyed the mineral interests would be withdrawn from entry and operation.

We offer two reasons for our opposition to this bill. First, since the United States was not a party to and did not cause or create the overlap, we strongly believe the Government should receive current fair market value for any land conveyed to a private party. We estimate the value of the land involved to be about $10,000 per acre. Second, this bill seeks to resolve only one of a great number of similar cases, existing or suspected, on National Forest lands involving good faith occupancy or encroachment. A few years ago we estimated 50,000 title claim cases existed, a major portion of which are believed to be encroachment due to a faulty private survey. Resolving these situations on a case-by-case basis would result in significant time impacts upon Congress and this Department.

Legislation now before the Senate, S. 705, if amended as we have proposed, would resolve these situations in a much more expeditious and equitable manner and at lower costs to all parties. The bill would permit the

Secretary of Agriculture to dispose by sale, exchange or interchange three specific types of National Forest System lands: (1) irregularly shaped tracts of 40 acres or less interspersed with or adjacent to mineral patents, (2) tracts of 5 acres or less encroached upon by improvements owned or occupied by private parties who had no advance notice that they were encroaching and who relied upon an erroneous survey, or an incorrect title search or land description, and (3) road rights-of-way, reserved or acquired, substantially surrounded by private lands and which are no longer needed by the United States. Payment for these lands would be by land, interest in land, or cash equal in value to the land conveyed. We recommend the approach described by S. 705 in lieu of S. 1242.

S. 1767--Directing the Secretary of Agriculture to Convey Lands in the Toiyabe National Forest, Nevada, to the Frontier Girl Scout Council.

We recommend that S. 1767 not be enacted. Creation of a privately held enclave through conveyance of the property would complicate management of the National Forest. Enactment of the bill would be inequitable to the many other holders of special use permits on National Forest lands and serve as a precedent to those holders who might desire similar treatment.

The Frontier Girl Scout Council has operated a summer camp at this site, approximately 50 miles northwest of Las Vegas, continuously since 1953. This is authorized by a special-use permit issued by the Forest Service in 1968; it expires in 1988. An annual fee, based on 2 percent of the appraised value, is currently $420. The area in question totals 15 acres, located in a narrow canyon. It contains several structures and other improvements installed by the Council under terms of the permit.

The camp is surrounded by National Forest lands. Camp activities are not

restricted to the permit area; full use is made of adjoining Federal lands for hiking and similar pursuits. The camp is located in the intensively used Lee Canyon recreation complex.

It is our understanding that this conveyance is sought so that the Council may make repairs and major improvements to the camp. The Council had earlier expressed the view that such work could not be justified unless the property was owned. We suggest that the special-use permit procedure fully recognizes the need for capital improvements and provides for terms of sufficient length to amortize those investments--up to 30 years.

We are concerned that the creation of a small private ownership would complicate the management of the National Forest. The tract, because of its location, has significant problems of erosion control (flooding has occurred in the past), water quality, avalanche, and recreation management. Public administration of the entire area would offer greater protection from these hazards. Some restrictions would be necessary in a conveyance to insure protection of and access to the surrounding Federal lands.

Enactment of legislation requiring conveyance of Federal lands currently under permit without consideration would encourage holders of 500 similar permits to request the same treatment. It is our firm belief that the public interest is best served by retaining the lands in public ownership and using the special-use permit procedure to provide for use by the Girl Scouts. We have worked with the Council in recent months on this matter and are confident that our continued contact will accommodate its concerns and thus avoid the need for special legislation.

H.R. 2863--Authorizing the Secretary of Agriculture to Sell a Portion of the the Tahoe National Forest, California, known as the Blyth Arena.

We support this legislation and urge that it be promptly enacted. Blyth Arena is an ice skating facility that was constructed for the purpose of hosting world class ice skating events during the Eighth Winter Olympic Games held in Squaw Valley, California, in 1960. Congress authorized construction of the Blyth facility in the Act of April 3, 1958 (72 Stat. 78), and the Act of May 14, 1958 (72 Stat. 109). Upon conclusion of the 1960 Winter Olympic Games, the arena continued operation as a training center for amateur ice skaters and for public recreational skating under permit to the State of California until 1974. Since then, other parties have attempted to operate the facility, but all have terminated their permit when the cost of operation exceeded income. With the withdrawal of the United States Olympic Committee as the facility's most recent operator to suffer economic losses, the skating facility was closed.

The need for disposal of this property is based on a 20-year history during which the ice skating facility has operated at an economic loss. Blyth Arena is the only publicly owned recreation facility in the highly developed Squaw Valley Ski Area complex. It is situated on a small isolated parcel of 5.2 acres of National Forest land completely encompassed by other privately owned commercial enterprises. The economic viability of the ice skating facility would likely be improved if operated in conjunction with these other commercial enterprises. The parcel of land upon which Blyth Arena is located is not needed for National Forest purposes.

The land would be conveyed, either by exchange or sale at public auction,

at not less than fair market value, along with Blyth Arena and appurtenant structures. The bill provides that if sold, an amount equal to the proceeds received from the sale of the Blyth Arena be authorized to be appropriated for the acquisition of lands in the State of California by the Secretary of Agriculture. The acquired lands would be those suitable for National Forest purposes and would be administered as part of the National Forest System.

This legislation is needed because the acts which authorized construction of the facility do not contain any provision for sale, exchange, or other means of disposal of the property. Disposal, either through the proposed sale by auction or by exchange would eliminate a need for major Federal expenditure to either renovate, mothball, or obliterate the facility. This proposed disposal has been discussed with State and local authorities, the United States Olympic Committee, and other interested parties. Their general response has been favorable.

S. 706--The "Federal Land Survey Act of 1981."

Because of a number of concerns which have been expressed regarding the provisions of S. 706, we recommend that the bill not be enacted and that a substitute proposal, which we are now developing with the Department of the Interior and will send to the Committee shortly, be enacted instead.

We are concerned about the quality and timeliness of surveys of the boundaries of the National Forest System. There are about 272,000 miles of property lines within the 190 million-acre System. About 47,000 miles have been surveyed and marked to standard through 1981. The Department

of the Interior, Bureau of Land Management, has the leadership for the survey of Federal lands and performs some surveys of System lands as part of their overall responsibility. In recent years about 20 percent of the Bureau's survey program has been directed to surveys of National Forest System lands. Funds are also transferred from the Forest Service to BLM, averaging about $1 million annually, to make additional surveys of System boundary lines. However, about 90 percent of the total mileage surveyed and marked was done by the Forest Service. We follow the Bureau's procedures in these surveys and submit them to the Bureau for approval and recording.

This procedure applies only to those western National Forests reserved from the public domain. Survey of acquired land in the West is done directly by the Forest Service under authorities available to this Department. The National Forests in the 14 eastern States (which is acquired land) originally surveyed by metes and bounds and in Texas, Puerto Rico, and Hawaii are surveyed by the Forest Service under State authority since no Federal authority is available. Only limited Federal authority is available for surveying acquired National Forests in the southern and midwestern States.

S. 706 would supplement existing authorities to survey Federal lands by requiring notification of affected public agencies and landowners when surveys are to be made and setting forth a timetable for completion and monumenting of the survey. We understand that the Department of the Interior has procedures in place that would handle the notification and time schedule requirements set forth in the bill. We are of the firm opinion that notification provides landowners the opportunity to participate in boundary line location and lessens the possibility that a temporary line

marking a Federal land boundary would be used as a permanent line by adjoining landowners. These procedures should adequately demonstrate the willingness of the Federal Government to conduct surveys in a cooperative manner with adjoining landowners.

We cannot support the bill's provisions calling for a feasibility study of a multipurpose national cadastre. Such a study would impose a substantial workload on those Departments that would be involved. Further, we believe that the proposal duplicates work of a similar nature underway by agencies of this Department. While we agree that an assessment of multipurpose national cadastre needs is a worthy objective, we suggest that it should be pursued by those Departments and agencies concerned as funds and availability of personnel permit.

Our major concern, and the one that relates to section 3 of S. 706, is the prompt completion of National Forest System boundary surveys. We believe that the Department of Agriculture should have the authority to survey National Forest System lands where such authority now rests with the Department of the Interior. That Department has indicated their concurrence in this proposal and is working with us to reallocate the surveying responsibilities between the two Departments. We regret we were not able to complete the development of this proposal in time to present it to the Committee at this hearing. We expect to have a substitute bill to you shortly.

We would expect to carry out these surveys of National Forest System land under the overall guidance of BLM's Manual of Instructions for the Survey of the Public Lands of the United States. The use of this administrative manual is not presently mandatory; we would recommend in our substitute bill that it be made so. Thus, a uniform set of quidelines for a Federal land survey system would be provided.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer the Subcommittee's questions.

Senator WALLOP. Two comments, Ray—one, when you were testifying on S. 1242 I think you made a statement that was probably not entirely correct, that the problem isn't exclusively related to private land surveys or inaccurate private land surveys. I think in some instances you meant there had been inaccurate Federal surveys as well.

Mr. HOUSLEY. I guess that possibility always exists.

Senator WALLOP. Any time anybody gets an instrument in their hands, it exists. I have seen it, for example, in Wyoming, not necessarily with the Forest Service, but with a BLM parcel that I discovered for them. They didn't have any record of its existence, and the other one is, when can we expect your proposal for the transfer of the survey authority from BLM?

I guess my question is why do that? Would it result in delay, or are you capable of picking it up right away without any additional procedures?

Mr. HOUSLEY. We are not certain what day that proposed legislation will be up. We thought we might be able to complete our negotiations in preparation of it yesterday, but within a short period we should be able to complete that and get it before you.

As to the Forest Service's ability to pick up the survey responsibility, that portion of it now filled by the BLM, the Forest Service already does a substantial amount of surveying, particularly in the Eastern United States where the public domain land is not involved, and also in the West involving acquired lands, the Forest Service does those already.

In addition, we are doing some surveying under delegated authority from BLM, and we have a substantial cadre of survey personnel. We are discussing with BLM the proportion of the budget request and personnel that might need to be considered in the shift of responsibilities. We need to work that out also.

Senator WALLOP. There is a need to get on with this from the standpoint of those who are affected by it, what the bill seeks to address, and so my suggestion is if you want to get on that train, we better get down to the station.

Mr. HOUSLEY. We are keenly aware of that advice.

Senator WALLOP. Mr. Parker, Senator Schmitt has come in. If you wouldn't mind indulging him and his statement on S. 706?

STATEMENT OF HON. HARRISON SCHMITT, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator SCHMITT. Thank you, gentlemen. Thank you, Mr. Chairman. I appreciate this opportunity to be with you this morning. I am sorry to interrupt the train of questioning that has been going forward since it does relate directly to my interest as well as the chairman's.

This is an important opportunity for the subcommittee to act on the problem of boundary surveys on public lands. Your action to hold hearings on a comprehensive measure to address this problem is a great step toward a long overdue solution, and I want to commend you for recognizing the need for action.

The bill which you are considering today, S. 706, attempts to resolve some of the longstanding Federal land survey issues which

have contributed to several thousand title claim and trespass situations, particularly throughout the Western United States.

I support this bill, and I would like to emphasize my respect and admiration for its sponsor, my colleague, the senior Senator from New Mexico, Senator Domenici. This measure is a further indication of his leadership in addressing complex and difficult problems within the committee with the full range of his considerable legislative talents. I would add that the issue of cadastre surveying is one which may have some alternative solutions such as an encouragement, direct or indirect, to the State to act as the inventory agent in this area. It is something that the committee might consider if problems develop on the proposals in S. 706.

The need for legislation, however, cannot be overemphasized. The present situation is fraught with problems which include a seemingly unmanageable backlog of Federal surveys and resurveys, a lack of cooperation with the local government and landowners in surveying of public lands, a lack of uniformity between Federal and State survey rules and regulations, and inaccurate and inaccessible records of survey. Although I have specifically mentioned problems which have arisen in the Western States, the repercussions can be felt by both individuals upon their own land and by national policy planners concerned with our Nation's resource development.

The inability of the Federal Government to identify its own boundary lines inhibits management of its lands and resources, affects its ability to grant easements and rights-of-way, delays energy development, and clouds property titles and tax assessments relative to adjoining private land. Landowners both private and governmental are affected in addition to planners, insurers, appraisers, lenders, builders, surveyors, and buyers.

I believe, Mr. Chairman, that in New Mexico we have the record for the application of Murphy's law in the question of Federal boundary surveys. Murphy's law, as you know, or the McPherson's rule as the Scots refer to it, is that which relates to the inherent animosity that inanimate objects such as surveys have toward human beings. Another way of putting it is if you drop a piece of bread, it invariably lands jammy side down, so that is certainly what has happened in the case of these surveys in many cases.

If you will permit me, I will capsulize an example from my own State which demonstrates all that can go wrong given the lack of timely land surveys. The example took place in and around Cloudcroft, N. Mex., near the Lincoln National Forest.

The Forest Service in 1967 transferred funds to the BLM as was appropriate to conduct a resurvey of the national forest boundaries. In 1969, the resurvey was abandoned due to lack of funds. However, the temporary markers which had been laid were not removed. At that time, surveyors encountered considerable difficulty in locating the original brass monuments, a fact which bears significance for later difficulties.

As the time passed, private landowners adjacent to the forest relied on the local private land surveyors to provide clear title descriptions, and in turn the land surveyors relied on 1969 markers. Title companies relied on the land surveyor, as did lending institutions. The entire community was, therefore, blindsided 14 years

later when the funding was once again channeled to the BLM for resumption of the resurvey efforts for the national forest boundaries.

The new survey crews succeeded where others had failed. By means of technological revolutions that had occurred in those intervening 14 years, they located the original monuments and established with sophisticated laser techniques that many lines, old and new, were inaccurate. The impact was predictable. Titles were no longer considered clear. Property transactions were halted. Tax assessments were in disarray, and property improvements were presumably lost due to boundaries that now went through such improvements. This is the situation as it exists even today.

The bill being considered today is an effort to prevent reoccurrence of this local drama. The moral of the Cloudcroft story is reflected in this measure, that Federal land surveys are of critical importance to the economic and social well being of this Nation's citizens, and very specifically to States like New Mexico where there is a large amount of Federal lands, in particular a large amount of forest lands.

In addition, efforts must be made to coordinate Federal surveys with other Federal, State, and local survey functions and cooperation with the affected public must be attended to, and that timeliness as well as accuracy are critical to all surveying and mapping activities.

Section 3 of the bill addresses delegation of survey responsibilities. I would offer the suggestion that this provision be strengthened to provide an expansion of the existing authority of the U.S. Forest Service to conduct surveys on National Forest System land. As you know, the Forest Service is now authorized to survey their boundaries on land coming into the System from private ownership. By permitting this authority to extend to surveys of national forest lands from the public domain, uncontrollable scheduling delays such as were experienced in the Lincoln National Forest could be eliminated. The Forest Service currently identifies 272,000 miles of property boundaries which require surveys. Under the present cooperative agreement between the Bureau of Land Management and the U.S. Forest Service, the Forest Service may conduct preliminary stages of survey activities, but must allow the BLM to schedule the finalization of the Forest Service surveys along with its own agency survey priorities.

As the chairman knows, BLM survey priorities are of great importance to development of our Nation's resources. That agency cannot be expected to always place the same importance on the need of a sister agency while demands on available personnel are already accelerating to cope with its own priorities. Therefore, equally legitimate management programs are halted relative to Forest Service lands in an agency which is familiar with survey law, which has the expertise, and which is already authorized to perform legal surveys in other circumstances.

Affected by this situation are timber sales, erosion control, reforestation, and other management activities which can only be carried out within the known boundaries.

I strongly urge you and the committee to include language such as that in my bill S. 1187 which is currently before the Agriculture

Committee to give the Forest Service the needed authority to conduct surveys and finalize surveys on national forest lands. No additional costs are involved, and such language would support the goal expressed in S. 706.

Thank you, Mr. Chairman, for your consideration today. I am grateful to have this opportunity to speak to an issue which is of great importance to those of us such as yourself in western lands and who have constituents who have lands that border forest lands.

I would be happy to try to answer any questions.

[The prepared statement of Senator Schmitt follows:]

STATEMENT OF
SENATOR HARRISON SCHMITT (R.- N.M.)

THANK YOU, MR. CHAIRMAN. I APRRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOUR COMMITTEE TO SPEAK ABOUT THE PROBLEM OF BOUNDARY SURVEYS ON PUBLIC LANDS. YOUR ACTION TO HOLD HEARINGS ON A COMPREHENSIVE MEASURE TO ADDRESS THIS PROBLEM IS A GREAT STEP TOWARD A LONG-OVERDUE SOLUTION, AND I WANT TO COMMEND YOU FOR RECOGNIZING THE NEED FOR ACTION ON THE LEGISLATION.

THE BILL WHICH YOU ARE CONSIDERING TODAY, S. 706, ATTEMPTS TO RESOLVE SOME OF THE LONGSTANDING FEDERAL LAND SURVEY ISSUES WHICH HAVE CONTRIBUTED TO SEVERAL THOUSAND TITLE CLAIM AND TRESPASS SITUATIONS, PARTICULARLY THROUGHOUT THE WESTERN UNITED STATES. I SUPPORT THIS BILL AND I WOULD LIKE TO EMPHASIZE MY RESPECT AND ADMIRATION OF ITS SPONSOR, MY COLLEAGUE FROM NEW MEXICO, SENATOR DOMENICI. THIS MEASURE IS A FURTHER INDICATION OF HIS LEADERSHIP IN ADDRESSING COMPLEX AND DIFFICULT PROBLEMS WITH THE FULL RANGE OF HIS CONSIDERABLE LEGISLATIVE TALENTS.

THE NEED FOR LEGISLATION CANNOT BE OVEREMPHASIZED. THE PRESENT SITUATION IS FRAUGHT WITH PROBLEMS WHICH INCLUDE A SEEMINGLY UNMANAGEABLE BACKLOG OF FEDERAL SURVEYS AND RESURVEYS, A LACK OF COOPERATION WITH THE LOCAL GOVERNMENT AND LAND OWNERS IN SURVEYING OF PUBLIC LANDS, A LACK OF UNIFORMITY BETWEEN FEDERAL AND STATE SURVEY RULES AND REGULATIONS, AND INACCURATE AN INACCESSIBLE RECORDS OF SURVEY. ALTHOUGH I HAVE SPECIFICALLY MENTIONED PROBLEMS WHICH HAVE ARISEN IN THE WESTERN STATES, THE REPERCUSSIONS CAN BE FELT BY BOTH INDIVIDUALS UPON THEIR OWN LAND AND BY NATIONAL

POLICY PLANNERS CONCERNED WITH OUR NATION'S RESOURCE DEVELOPMENT. THE INABILITY OF THE FEDERAL GOVERNMENT TO IDENTIFY ITS OWN BOUNDARY LINES INHIBITS MANAGEMENT OF ITS LANDS AND RESOURCES, AFFECTS ITS ABILITY TO GRANT EASEMENTS AND RIGHTS-OF-WAY, DELAYS ENERGY DEVELOPMENT, AND CLOUDS PROPERTY TITLES AND TAX ASSESSMENTS. LANDOWNERS, BOTH PRIVATE AND GOVERNMENTAL ARE AFFECTED IN ADDITION TO PLANNERS, INSURERS, APPRAISERS, LENDERS, BUILDERS, SURVEYORS, AND BUYERS.

I BELIEVE, MR. CHAIRMAN, THAT IN NEW MEXICO WE HAVE THE RECORD FOR THE APPLICATION OF MURPHY'S LAW IN THE QUESTION OF FEDERAL BOUNDARY SURVEYS. IF YOU WILL PERMIT ME, I WILL CAPULIZE AN EXAMPLE FROM MY OWN STATE WHICH DEMONSTRATES ALL THAT CAN GO WRONG GIVEN THE LACK OF TIMELY LAND SURVEYS. THE EXAMPLE TOOK PLACE IN AND AROUND CLOUDCROFT, NEW MEXICO, NEAR THE LINCOLN NATIONAL FOREST. THE FOREST SERVICE, IN 1967, TRANSFERRED FUNDS TO THE BLM AS WAS APPROPRIATE TO CONDUCT A RESURVEY OF THE NATIONAL FOREST BOUNDARIES. IN 1969 THE RESURVEY WAS ABANDONED DUE TO LACK OF FUNDS, HOWEVER THE TEMPORARY MARKERS WHICH HAD BEEN LAID WERE NOT REMOVED. AT THE TIME SURVEYORS ENCOUNTERED CONSIDERABLE DIFFICULTY IN LOCATING THE ORIGINAL BRASS MONUMENTS, A FACT WHICH BEARS SIGNIFICANCE FOR LATER DIFFICULTIES. AS TIME PASSED PRIVATE LAND OWNERS ADJACENT TO THE FOREST RELIED ON LOCAL PRIVATE LAND SURVEYORS TO PROVIDE CLEAR LAND TITLE DESCRIPTIONS, AND IN TURN, THE LAND SURVEYORS RELIED ON THE 1969 MARKERS. TITLE COMPANIES RELIED ON THE LAND SURVEYOR, AS DID LENDING

INSTITUTIONS. THE ENTIRE COMMUNITY WAS THEREFORE BLINDSIDED FOURTEEN YEARS LATER WHEN THE FUNDING WAS ONCE AGAIN CHANNELED TO THE BUREAU OF LAND MANAGEMENT FOR RESUMPTION OF THE RESURVEY EFFORTS FOR THE NATIONAL FOREST BOUNDARIES. THE NEW SURVEY CREWS SUCCEDED WHERE OTHERS HAD FAILED, LOCATED THE ORIGINAL MONUMENTS, AND ESTABLISHED WITH SOPHISTICATED LASER TECHNIQUES THAT MANY LINES, OLD AND "NEW", WERE INACCURATE. THE IMPACT WAS PREDICTABLE: TITLES WERE NO LONGER CONSIDERED CLEAR, PROPERTY TRANSACTIONS WERE HALTED, TAX ASSESMENTS WERE IN DISARRAY, AND PROPERTY IMPROVEMENTS WERE PRESUMABLY LOST. THIS IS THE SITUATION AS IT EXISTS EVEN TODAY.

THE BILL BEING CONSIDERED TODAY IS AN EFFORT TO PREVENT A REOCCURENCE OF THIS LOCAL DRAMA. THE MORAL OF THE CLOUDCROFT STORY IS REFLECTED IN THIS MEASURE: THAT FEDERAL LAND SURVEYS ARE OF CRITICAL IMPORTANCE TO THE ECONOMIC AND SOCIAL WELL-BEING OF THIS NATION'S CITIZENS, THAT EFFORTS MUST BE MADE TO COORDINATE FEDERAL SURVEYS WITH OTHER FEDERAL, STATE AND LOCAL SURVEY FUNCTIONS, THAT COOPERATION WITH THE AFFECTED PUBLIC MUST BE ATTENDED TO, AND THAT TIMELINESS AS WELL AS ACCURACY ARE CRITICAL TO ALL SURVEYING AND MAPPING ACTIVITIES.

SECTION 3 OF THE BILL ADDRESSES DELEGATION OF SURVEY RESPONSIBILITY. I WOULD OFFER THE SUGGESTION THAT THIS PROVISION BE STRENGTHENED TO PROVIDE AN EXPANSION OF THE EXISTING AUTHORITY OF THE U.S. FOREST SERVICE TO CONDUCT SURVEYS ON NATIONAL FOREST SYSTEM LAND. AS YOU KNOW THE FOREST SERVICE NOW IS AUTHORIZED TO SURVEY THEIR BOUNDARIES ON LAND COMING INTO THE SYSTEM FROM PRIVATE OWNERSHIP. BY

PERMITTING THIS AUTHORITY TO EXTEND TO SURVEYS OF NATIONAL FOREST LANDS FROM THE PUBLIC DOMAIN, UNCONTROLLABLE SCHEDULING DELAYS SUCH AS WERE EXPERIENCED IN THE LINCOLN NATIONAL FOREST COULD BE ELIMINATED. THE FOREST SERVICE CURRENTLY IDENTIFIES 272,000 MILES OF PROPERTY BOUNDARIES WHICH REQUIRE SURVEYS. UNDER THE PRESENT COOPERATIVE AGREEMENT BETWEEN THE BUREAU OF LAND MANAGEMENT AND THE U.S. FOREST SERVICE, THE FOREST SERVICE MAY CONDUCT PRELIMINARY STAGES OF SURVEY ACTIVITIES, BUT MUST ALLOW THE BUREAU OF LAND MANAGEMENT TO SCHEDULE THE FINALIZATION OF THE FOREST SERVICE SURVEYS ALONG WITH ITS OWN AGENCY SURVEY PRIORITIES. AS WE KNOW, BLM SURVEY PRIORITIES ARE OF GREAT IMPORTANCE TO DEVELOPMENT OF OUR NATION'S RESOURCES. THAT AGENCY CANNOT BE EXPECTED TO PLACE THE SAME IMPORTANCE ON THE NEEDS OF A SISTER AGENCY WHEN DEMANDS ON AVAILABLE PERSONNEL ARE ALREADY ACCELLERATING TO COPE WITH ITS OWN PRIORITIES. THEREFORE, EQUALLY LEGITIMATE MANAGEMENT PROGRAMS ARE HALTED IN AN AGENCY WHICH IS FAMILIAR WITH SURVEY LAW, WHICH HAS THE EXPERTISE, AND WHICH IS ALREADY AUTHORIZED TO PERFORM LEGAL SURVEYS. AFFECTED BY THIS SITUATION ARE TIMBER SALES, EROSION CONTROL, REFORESTATION, AND OTHER MANAGEMENT ACTIVITIES WHICH CAN ONLY BE CARRIED OUT WITHIN KNOWN BOUNDARIES.

I STRONGLY URGE YOU TO INCLUDE LANGUAGE TO GIVE THE FOREST SERVICE NEEDED AUTHORITY TO CONDUCT SURVEYS ON NATIONAL FOREST LANDS. NO ADDITIONAL COSTS ARE INVOLVED AND SUCH LANGUAGE WOULD SUPPORT THE GOALS EXPRESSED IN S. 706.

THANK YOU FOR YOUR ATTENTION, AND FOR ANY CONSIDERATION WHICH YOU MAY GIVE TO MY RECOMMENDATION. AGAIN, I AM GRATEFUL FOR THE OPPRTUNITY WHICH YOU HAVE GIVEN ME TO SPEAK IN SUPPORT OF S. 706 AND THE NEED FOR TIMELY LAND SURVEYS.

Senator WALLOP. Thank you, Senator Schmitt. I gather from your statement that you concur with Ray Housley's recommendation that they move on with their own authority to conduct surveys?

Senator SCHMITT. Yes, I do, and I was happy to hear in his testimony and see in his testimony that apparently ongoing discussions between the two agencies seem to be leading in that direction.

Senator WALLOP. It is nice from this Senator's standpoint to see the agencies trying to provide a public service and not trying to engage or indulge in force.

I appreciate it, both you, Ray, and Jim. It is nice to hear that that kind of thing is going on about things which do need to get on.

I have questions which Senator Schmitt has submitted. Time permitting, I will ask them. Otherwise, I will submit them and ask if we can get answers.

Senator SCHMITT. I would appreciate that, Senator. Thank you very much.

Senator WALLOP. The next witness is Mr. Jim Parker on, again, S. 706, 835, 1501, and H.R. 1528, 1543, and H.R. 2475.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. PARKER. Mr. Chairman, I am pleased to be able to testify this morning on S. 706.

We certainly understand the motivation and the problems involved. We think there are perhaps other solutions, and therefore, we oppose the bill for several reasons, some technical, some administrative, and some legal. I will just highlight those for you. We define the details in our prepared statements.

Senator WALLOP. All your statements will be included in the record.

Mr. PARKER. Thank you. The bill fails to distinguish between original surveys, dependent surveys, and independent surveys, and therefore, there is considerable confusion. Primarily it deals with the dependent resurveys; S.706 would supplement existing legislation and we feel would add another basically unnecessary layer to present Federal law. We think there are better solutions.

One provision of the bill calls for Congress declaring that it is the continuing policy of the Federal Government to protect bona fide rights or claims of any claimants or owners of lands affected by Federal land survey, resurvey, or retracement. It is well established under the statutes that presently exist and under case law that Federal surveys or resurveys do not affect bona fide rights.

The bill would also require giving notice to all affected parties. We agree with that concept and our procedures presently call for us to do that. This would we feel, be a duplication of what we already do. In some instances notice would also be unnecessary, particularly in the case of original surveys where there are no valid existing private rights involved.

Regarding the time frames, we generally agree with them, and for the most part we follow those in our present procedures. How-

ever, if there was a protest, the 90-day turnaround time would be insufficient to allow us to process the protest.

The provision dealing with monumenting section center corners, is already required by our "Manual of Instructions for Survey of the Public Lands of the United States." We see no reason for putting that into a statute.

The bill requires removal of monuments not certified within 90 days. These monuments would have to be removed within 15 days. This time schedule would not be feasible under certain circumstances, particularly where the survey is in a mountainous area or an isolated location where there are short periods of suitable climatic conditions. The monuments could be located under several feet of snow and it would be impossible for us to meet that requirement if we had to do that with our limited funding. It would just double the work in that regard, and there would be delays to the regular survey program. We feel that is too rigid a time frame.

In summary, we object to legislating a rigid time schedule for survey activities. We recognize that there is a need for prompt and accurate completion of survey activities, and we have incorporated a similar time schedule into our activities. The schedule needs to be flexible however to account for physical and fiscal limitations which could occur. We believe that can best be done by the executive branch familiar with the technical aspects of the program.

We are currently working on a proposal with the Forest Service to reallocate the responsibilities of the two Departments with respect to survey activities, and we hope that that will be forwarded to you very soon.

With regard to the assessment called for in the bill, we believe that the agencies involved already have the authority to undertake such a study if they believe it would be beneficial. However, we think that study would require a very long and expensive process in an era of emphasis on economy and tight funding. We don't think that that would be the best use of our funds in the survey area, and it would tend to delay the program even more.

We believe that we are moving toward, at least in the public land States, a system that would provide many of the same benefits proposed in the bill.

Senator WALLOP. I guess I have an inherent problem with the thrust of your testimony when you suggest that there are other means by which these things can be accomplished and don't suggest those means. There are people genuinely in problems with their property, and their property rights, and while I can appreciate some of the concerns that you raise, I really think that it is necessary to get on with trying to resolve these things for those people that have those problems.

While you may not like rigid timetables, there is no suggested alternative in there as to what set of circumstances--I can understand coming from that area problems with snow and climatic conditions, but also coming from that country, I can understand a lot of trouble people have with BLM which follows no timetable in some instances, and it is highly frustrating to sit and try to get something accomplished and it is like fighting the "Pillsbury Doughman." You go in as far as you want and you never know whether you have made contact or not, so my hope is that in your

opposition, in your suggestion that there are other ways to travel, that very promptly within this week you suggest what those are because I told Ray, it is my concern, and Senator Schmitt's and Senator Domenici's, or any of the others that are involved in these bills, none of them are frivolous types. None of them are known to be high demanders of public funds, but there is a problem out there that does exist. It is not so much a problem with Senators as it is people of the country who like to believe that their Government is in some way responsive.

I would hope that within the 15-day period it would be my hope that you can thoroughly address what your alternatives are so that they can be weighed.

Would you do that?

Mr. PARKER. We certainly will try to do that. We are planning to have most, if not all of the problem cases that go back into history, and some of them go back a long way, completed and cleaned up by 1984. We would then be on a current pipeline basis.

We hope what we are doing will correct the problems mentioned.

Senator WALLOP. OK. I appreciate the difficulties that you have, but sometimes they are difficulties that the rest of the world has no less than that. The Government struggles with its own difficulties, so if we can accelerate those things, it would be in everybody's interest.

Thank you. Jim, if you wouldn't mind, I am going to let Senator Murkowski give his testimony.

STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Thank you very much, Mr. Chairman. I have a brief statement concerning the Public Lands Subcommittee of the Energy and Natural Resources Committee.

I am appearing on S. 835, the bill to provide relief for Jerry L. Crow so that he will be able to purchase up to 10 acres of public land in my State and to lease up to an additional 70 acres.

I am supporting my colleague Senator Stevens from Alaska who has tried since 1979 to rectify the injustice perpetrated on Mr. Crow. In fact, during the 96th Congress this bill passed the Senate and became the victim of the Alaska lands fight and did not pass the House of Representatives.

Briefly to outline Mr. Crow's case, in 1958, Mr. Crow moved to Alaska, lived in the bush for 14 of the past 23 years. In 1967 he occupied a trade and manufacturing site under the Homestead Act on the Denali Highway. At that time, he notified the BLM that he intended to use the land for commercial campground. Over the next 5 years he faithfully carried out his intentions to build a cabin, a small campground, and in 1971 opened up Eskimo Camp for business.

A year later he filed an application to purchase this site, and in 1973, a full year later, the Bureau of Land Management conducted a field examination to assure that Mr. Crow had complied with the requirements of the trade and manufacturing regulations provided by the Homestead Act of 1898.

The Bureau of Land Management determined that Mr. Crow failed to show that the campsite was a productive industry, a requirement for trade and manufacturing regulations. I would like to point out that BLM never clearly defined to this day what T. & M. regulations really were for Mr. Crow, now are there any criteria specifically spelled out by the regulations.

Mr. Crow has contested BLM's determination at the Interior Department's Office of Hearings and Appeals, the Interior Board of Land Appeals, and Federal court, and at each juncture his application has been rejected.

Mr. Chairman, this is a private relief bill, and is Mr. Crow's final option. Here is an example of an individual who is trying to comply with the Federal regulations in good faith but has met with bureaucratic obstacles at every turn; Mr. Crow's perseverance and desire to establish a business in Alaska should be applauded. It is indeed unfortunate that he has met with so many roadblocks. However, by supporting this bill I would hope to provide the help that is needed.

Mr. Chairman, the Public Lands Subcommittee is now considering Senate bill 1501, the Educational Mining Act of 1982. The bill would convey approximately 79 acres near Fairbanks, Alaska, to the University of Alaska.

S. 1501 would provide for beneficial conveyance of lands under Federal jurisdiction for a true life learning experience to complement the university's program in mining, engineering and geological engineering. The conveyance of these lands will coordinate with the transfer of an additional 445 acres to the State of Alaska. These lands were originally subject to the valid mining claims of Mr. Turry Anderson, a well-known Alaskan miner. It is the desire of Mr. Anderson and the University of Alaska that these properties provide a better educational opportunity and a more complete learning center for mine engineering.

This is not a new concept and Congress has acted favorably on legislation of this sort in the past. The University of New Mexico, the Colorado School of Mines, and Michigan Tech have all been beneficiaries of this type of conveyance. It has greatly enhanced their ability to have comprehensive educational programs.

I am joined by my colleague from Alaska, Senator Stevens, in sponsoring this legislation earlier this year. However, it was also introduced during the 96th Congress and was favorably reviewed by the Department of the Interior, Bureau of Land Management. It is my understanding that this administration has also reviewed favorably this legislation, and there may be some technical inconsistencies with the land description in the legislation. I believe the administration's comments will highlight this matter, but let me say the bill identifies a parcel of land that has already been conveyed to the State of Alaska. This is part of the lands that I referred to earlier. That would be used in coordination with the minesite.

The legislation is consistant with congressional action in the past. I am hopeful, Mr. Chairman, that we can expeditiously move S. 1501 so that we can resolve this issue, and I appreciate your accommodation, Mr. Chairman.

[The prepared statements of Senator Murkowski follow:]

STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA ON S. 706

Mr. Chairman, today the Subcommittee on Public Lands is holding hearings on S. 706 introduced by my colleague Mr. Domenici which will encourage timely notice, conduct, approval and record of federal land surveys and will authorize assessment of a multipurpose National cadastre center.

In my state of Alaska completing surveying of federal lands is an important issue. As of October 1, 1981, approximately 14 million acres of lands need to be surveyed to complete conveyances under the Alaska Native Claims Settlement Act, 45.5 million acres of land need to surveyed for conveyances to the State under the Statehood Act and 12,000 miles of exterior boundaries of the new conservation units must be surveyed under the Alaska National Interest Lands Conservation Act.

I am hopeful that the passage of this bill will encourage the Bureau of Land Management to more promptly certify monuments and record surveys from work performed in the field. Also, I believe we should explore the feasibility study for establishing a multipurpose national cadastre system. Lastly, I believe this Committee should consider inclusion in this bill provisions which encourage better co-ordination between federal, state and local governments in conducting, certifying and recording surveys and which allows contracting for surveying services on the basis of demonstrated competence and qualification at a fair and reasonable price.

I look forward to working with this Committee, and in particular, Mr. Domenici, on this important bill.

STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA ON S. 835

Mr. Chairman, the Public Lands Subcommittee of the Energy and Natural Resources Committee is holding hearings today on S. 835 a bill to provide for the relief of Jerry L. Crow so that he will be able to purchase up to 10 acres of public land in Alaska and to lease up to an additional 70 acres. I am supporting my colleague Senator Stevens who has tried since 1979 to rectify the injustice perpetrated on Mr. Crow. In fact, furing the 96th Congress this bill passed the Senate but became the victim of the Alaska Lands fight and did not pass the House of Representatives.

Let me outline the history of Mr. Crow's case. In 1958, Jerry L. Crow moved to Alaska and has lived in the bush for 14 of the past 23 years. Crow, in 1967, occupied a Trade and Manufacturing Site under the Homestead Act on the Denali Highway. At that time he notified the Bureau of Land Management that he intended to use the land for a commercial campground. Over the next five years, he faithfully carried out his intentions. He build a cabin, a small campground, and in 1971 opened up "Eskimo Camp" for business. A year later he filed an application to purchase the site and in 1973, a full year later, the bureau of Land Management conducted a field examination to ensure that Crow had complied with the requirements of the Trade and Manufacturing Regulations provided by the Homestead Act of 1898.

The Bureau of Land Management determined that Mr. Crow failed to show that his campsite was a "productive industry"–a requirement of the Trade and Manufacturing Regulations. Let me point out that the BLM never clearly defined these T & M Regulations for Mr. Crow, not are there any criteria specifically spelled out by the regulations that the BLM may use to make a determination of what constitutes a "productive history."

Mr. Crow has contested BLM's determination at the Interior Department's Office of Hearings and Appeals, the Interior Board of Land Appeals, and Federal court. At each juncture his application has been rejected.

Mr. Chairman, this private relief bill is Mr. Crow's final option. Here is an example of an individual who has tried to comply with Federal regulations in good faith and has met with bureaucratic obstacles at every turn. Mr. Crow's perserverence and desire to establish a lucrative business in Alaska should be applauded. It is unfortunate that he has met with so many roadblocks, however, by supporting this bill I hope we can provide the help that is needed.

STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA ON S. 1501

Mr. Chairman, The Public Lands Subcommittee is now considering S. 1501, "The Educational Mining Act of 1982." The bill that would convey approximately 76 acres near Fairbanks, Alaska to the University of Alaska.

S. 1501 would provide for a beneficial conveyance of lands under Federal jurisidication for a true life learning experience to compliment the University's program in mining engineering and geological engineering. The conveyance of these lands will coordinate with the transfer of an additional 445 acres to the State of Alaska. These lands were originally subject to the valid mining claims of Mr. Turry Anderson, a well-known Alaskan miner. It is the desire of Mr. Anderson and the University of Alaska that these properities provide for a better educational opportunity and a more complete learning center for mine engineering.

This is not a new concept and Congress has acted favorably on legislation of this sort in the past. The University of New Mexico, the Colorado School of Mines and Michigan Tech have all been beneficiaries of this type of conveyance. It has greatly enhanced their ability to have comprehensive educational programs.

I joined with my colleague from Alaska, Senator Stevens in sponsoring this legislation earlier this year. However, it was also introduced during the 96th Congress and was favorably reviewed by the Department of the Interior Bureau of Land Management. It is my understanding that this Administration has also reviewed favorably this legislation. There may be some technical inconsistencies with the land description in the legislation. I believe the Administration's comments will highlight this matter, but let me say that the bill identifies a parcel of land that has already been conveyed to the State of Alaska. This is part of the land that I referred to earlier. That would be used in coordination with the mine site.

The bill, would enhance the University of Alaska's program. The legislation is consistent with Congressional actions in the past. Therefore, I am hopeful we can expeditiously move S. 1501 so we can resolve this issue.

Senator WALLOP. Thank you, Frank. I appreciate your coming down to issue your testimony.

Jim, please continue.

STATEMENT OF JAMES M. PARKER. ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR—Resumed

Mr. PARKER. If we could continue, next is S. 835 which is the legislation dealing with Mr. Crow. This would allow an exemption to the provisions of section 10 of the act of 1898, the Trade and Manufacturing Site Act.

The basic question is one of prospective versus productive business enterprise, under the act. We are opposed to enactment of the bill just as we were opposed to a somewhat similar bill, S. 1715 in the 96th Congress. There are rather complex facts, and a long case history involved in this. Basically a hearing was held, the application was rejected. The Board of Land Appeals upheld that position. It was taken to the district court and was affirmed there.

Since we know of no rights or equity in the case, we believe that enactment of S. 835 would set an unfavorable precedent which would lead to the introduction of other bills of this nature, and could render meaningless those criteria established in the 1898 act for patenting trade and manufacturing sites. We believe that enactment of the bill would also unfairly favor Mr. Crow over other claimants who are in a similar situation. It would be particularly unfavorable to those who have also been turned down under similar circumstances and criteria.

If Congress should determine that relief which this bill would grant to Mr. Crow is warranted, we would recommend that the suggested amendments contained in our report be adopted.

If we could move to S.1501, this is the bill the Senator was just referring to regarding the University of Alaska. We are not taking a position regarding the conveyance of the lands involved. The basic issue in this case is between the State and the university.

Whether or not the legislation is enacted, the land would be conveyed out of Federal ownership. We have no objection to conveying the lands under either of the alternatives. We wish to point out, however, that the land description of the bill differs substantially from the land contained in the mineral survey prepared for the mining claim. One section described in the bill already has been patented to the State of Alaska, and therefore would not be involved. Other lands there have been selected by the State under the entitlement provisions of the Statehood Act.

We believe it would be inappropriate for us to take a position on this matter between the University and the State.

Senator WALLOP. Those land descriptions, will you provide those?

Mr. PARKER. Yes. They are in the prepared statement.

On H.R. 1528, the act required that all patents issued by the United States after August 30, 1890, west of the 100th meridian, contain an express reservation of a right-of-way for ditches and canals constructed by the authority of the United States. This reservation is presently a standard provision in all public land disposals.

H.R. 1528 would make the requirement of the reservation of ditches and canals contained in the action of August 30, 1890, inapplicable to lands in one section in California which were conveyed by three patents.

The bill would also declare that required reservation which is found in each of the three patents would be of no further force and effect with regard to the lands covered by the patents.

We oppose the bill. In effect it is a private relief bill involving a situation which is general in nature and which we believe could be applied to almost all of the lands in the West which the Federal Government has patented. Rather than adopt such an approach, we recommend that there be a study to determine if the continuation of the act of August 30, 1890, requirements are still necessary.

If it is determined that the reservation requirement is no longer needed, the law should be repealed and provisions made to remove the reservation from all patents rather than from just a few. If any such legislation is enacted, it is essential that it contain appropriate safeguards for existing or planned ditches and canals, and that it provide for the requirements and recommendations of the Bureau of Reclamation.

If we could move to H.R. 1543, this is a bill that would confirm the 1942 conveyance of certain real property in Alameda County, Calif., by the Central Pacific Railroad Co. to some private parties.

We have no objection to enactment of the bill. The bill is identical to H.R. 6318 as amended in the 96th Congress. It is unusual in that it would encompass lands within 50 feet of each side of a center main track of the railroad whose grants this act would confirm. Grants of land within 50 feet of each side of the center of the main track are prohibited by the act of May 25, 1920. However, the 1940 grant by the railroad includes the railway depot which was of necessity placed closer than 50 feet from the tracks, making this exception necessary.

Because of the fact that this case is highly unusual, we wouldn't want it considered as a precedent.

H.R. 2475 would withdraw certain described lands from the operation of the general public land laws to protect the watershed supplying the water to the city of Los Angeles.

Basically what is involved here is a revocation of a withdrawal so that the lands could be exchanged. A land exchange would then take place between private landowners and the Bureau, and the withdrawal would be placed on the exchanged land acquired by the Bureau. We are exchanging 160 acres for 202 acres. The issue here is protection of the Owens River pupfish, a federally listed endangered species. If the private lands were to be developed the pupfish habitat, containing the largest population of the endangered pupfish found anywhere in the world, would be disturbed, and that is the reason for the proposal.

The Bureau of Land Management is prepared to carry out the proposed exchange. We have completed environmental assessment, the appraisal, the exchange agreement, and other necessary reports.

Senator WALLOP. You believe the exchange would be unnecessary?

Mr. PARKER. Pardon?

Senator WALLOP. I didn't understand your last sentence. Did you say the exchange would be unnecessary?

Mr. PARKER. No; we favor the exchange and have prepared all the necessary documents to complete it.

Senator WALLOP. I'm sorry. I thought you said it would be unnecessary. I was having a hard time fitting that in with what I thought you were saying up to that point.

[The prepared statements of Mr. Parker follow:]

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 706, A BILL "TO ESTABLISH A NATIONAL POLICY TO PROVIDE FOR THE TIMELY NOTICE, CONDUCT, APPROVAL, AND RECORD OF FEDERAL LAND SURVEYS, AND FOR OTHER PURPOSES."

I am pleased to appear before this subcommittee to discuss S. 706.

S. 706 would establish a time schedule and certain other procedures to be followed in any survey or resurvey of public lands and provide for an assessment of multipurpose national cadastre information needs. Under section 3 of the bill, the Secretary of the Interior, or his designee, would be required in conducting any survey or resurvey of public lands to--(1) give to all affected Federal agencies, local governments, individual claimants, entrymen, landowners, and the local public, not less than a 30-day notice of intent to conduct, certify, or record a survey or resurvey; (2) initiate the survey or resurvey within six months after the notice of intent; (3) complete the survey or resurvey and any necessary monumentation within two years after initiating the survey or resurvey; and (4) certify the survey or resurvey in the appropriate land office within 90 days after completing the survey or resurvey.

Should the Secretary fail to certify a monument within the required 90-day period, the bill calls for the temporary monument to be removed within 15 days after the expiration of the 90-day period. Within 30 days of the removal, the Secretary would be required to publish in the Federal Register and in a local newspaper

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Section 3(b) would require that the section center corner be monumented and certified in accordance with section 3(a) of the Act when a section subdivision survey is conducted involving both Federal and non-Federal lands. The subdivision of sections and the placing of a monument at the "center 1/4 section corner" is a requirement of BLM's Manual of Instructions for the Survey of the Public Lands of the United States, which presently serves as the basis for all legal surveys of the public lands and decisions. Many public land States already, as a matter of State law, require compliance with this provision of the Manual.

Section 3(c) provides that if a monument is not certified within 90 days, the temporary monument must be removed within 15 days after the 90-day period has expired. This time schedule would not be feasible under some circumstances. For instance, a monument may be in an isolated location accessible only during short periods of time due to seasonal climatic conditions. Many such monuments will be buried under several feet of snow or may be reachable only by helicopter service which cannot operate under all weather conditions. Necessarily limited funding and manpower also could prevent timely compliance with the 15-day requirement.

In summary, we object to the legislating of rigid time schedules for survey activities under section 3 of S. 706. We fully recognize the need for prompt and accurate completion of our survey activities and we have, in fact, established a time schedule for such activities similar to that mandated by S. 706. Such a schedule, however, must be flexible enough to take into account necessary physical and fiscal limitations and can therefore best be established by the Executive Branch agency familiar with all the technical aspects of the program. We note that we are currently working with the Department of Agriculture on a proposal

that will reallocate the responsibilities of the two Departments with respect to survey activities. This will be forwarded to you as soon as it is completed.

In section 2(b)(4) of S. 706, Congress declares that it is the continuing policy of the Federal Government to provide national leadership in the development of a multipurpose national cadastre as a basis for improved land conveyance procedures. Section 4 of S. 706 would direct the Secretaries of the Interior and Agriculture, in consultation with State Governors and the President of the National Academy of Sciences, to conduct an assessment of multipurpose national cadastre needs and develop a feasibility study for establishing a national system. We note that the agencies involved already have the authority to undertake such a study if they believe it would be beneficial. However, such a study would require a review of the survey requirements of each of the 50 States—a long, expensive process. In an era of emphasis on economy and tight funding, we do not believe that establishment of such a program should be required.

This concludes my statement. I will be happy to answer questions.

Law Judge rejecting claimant's application was affirmed by the Interior Board of Land Appeals and then by the U.S. District Court for the District of Alaska. The purpose of S. 835 is to enable Mr. Crow to obtain title to his claim irrespective of those decisions.

The decisions established that the claimant has not met the requirements for a Trade and Manufacturing site in accordance with the 1898 Act and has no legal right to the site under that Act. In addition, we do not believe that there are any equities on the part of the claimant which would justify special legislation exempting this claim from the provisions of law.

Since we know of no rights or equities in this case, we believe enactment of S. 835 would set an unfavorable precedent which could lead to the introduction of other bills of this nature and could render meaningless those criteria established in the 1898 Act for patenting Trade and Manufacturing sites. Also, we believe that enactment of the bill would unfairly favor Jerry L. Crow over other claimants who are in similar situations.

We also oppose the bill because the special relief which it would grant could encourage other applicants to use "prospective business" rather than "productive business" during the life of the claim in order to gain title to land through T & M operations. Such activity would conflict with the Act of May 14, 1898, which indicates that a T & M site may be purchased upon submission of proof that said area embraces improvements needed in the prosecution of productive industry. In addition, use of of a prospective business to acquire a T & M site is specifically prohibited

by regulations implementing the Act. Further, the relief would be inequitable to those claimants who actually showed more business having been conducted than did Mr. Crow, but whose claims have been rejected for like reasons. As I said earlier, we know of no equity that would distinguish Mr. Crow from others in a similar situation.

Section 3 of the bill refers to an "agreement" which the Secretary would be required to enter into with Mr. Crow, pursuant to the provisions of section 302 of the Federal Land Policy and Management Act. Section 302 of the Act does not authorize or require the Secretary to enter into agreements with private individuals. However, the section does authorize the Secretary to lease public lands. If the bill is favorably considered by the Congress, we urge that you adopt the language of amendment that we have included in our report.

In summary, we oppose enactment of S. 835. However, if the Congress should determine that the relief which the bill would grant Mr. Crow is warranted, we recommend that the suggested amendments contained in our report be adopted.

This concludes my statement. I will be pleased to respond to your questions.

now the University, would have the title its seeks even without enactment of S. 1501. If they are invalid, S. 1501 would provide that title would still pass to the University, rather than to the State under its selection.

Whether legislation is enacted or not, the lands would be conveyed out of Federal ownership. We have no objection to conveying the lands under either alternative. However, we wish to point out that the land description in the bill differs substantially from the land contained in the mineral survey prepared for the mining claim. In addition, we believe it would be inappropriate for us to take a position on the manner in which S. 1501 resolves the question of State versus University interests in the land. We believe that this question is best addressed by the interested parties.

This concludes my statement. I will be happy to answer questions.

FEB 11 1982

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 1528, ON ACT "TO PROVIDE AN EXCEPTION TO THE REQUIREMENTS OF THE ACT OF AUGUST 30, 1890 (26 Stat. 391; 43 U.S.C. 945), WITH REGARD TO CERTAIN LANDS IN RIVERSIDE COUNTY, CALIFORNIA."

I appreciate the opportunity to appear here today to present the Department of the Interior's views on H.R. 1528.

The Act of August 30, 1890, required that all patents issued by the United States after August 30, 1890, west of the one hundredth meridian, contain an express reservation of a right-of-way for ditches and canals constructed by the authority of the United States. This reservation is presently a standard provision in all public land disposals.

H.R. 1528 would make the requirement for the reservation of the ditches and canals contained in the Act of August 30, 1890, inapplicable to lands in one section in California which were conveyed by three United States patents. The bill would also declare that the required reservation, which is found in each of the three patents, would be of no further force and effect with regard to the lands covered by the patents.

We oppose the enactment of H.R. 1528.

The bill is in effect a private relief bill involving a situation which is general in nature and applies to much of the land in the West. The bill would address only three patents although the reservation of ditches and canals appears in most public land patents issued since 1890, as required by the 1890 Act. Apparently, the encumbrance imposed on property ownership by the ditches and canals reservation is objectionable to title companies

However, we would urge that our position on this matter and the Committee's action, if it adopts our position, not be considered as a precedent. We continue to believe that, as a general rule, there should be no deviations from the Act of May 25, 1920, which as I said specifies that no conveyance authorized by that Act shall have the effect of diminishing the involved right-of-way to less than 50 feet on each side of the center of the main track of the railroad.

This concludes my statement. I would be pleased to respond to any questions.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 2475, A BILL "TO WITHDRAW CERTAIN LANDS IN MONO COUNTY, CALIFORNIA, FROM SETTLEMENT, SALE, LOCATION, OR ENTRY FOR THE PURPOSE OF PROTECTING THE WATERSHED SUPPLYING WATER TO THE CITY OF LOS ANGELES, AND TO RESCIND SUCH WITHDRAWAL FOR CERTAIN OTHER LANDS IN MONO COUNTY, CALIFORNIA."

I am pleased to appear today before this subcommittee to discuss H.R. 2475.

H.R. 2475 would withdraw certain described lands from the operation of the general public land laws to protect the watershed supplying water to Los Angeles. The land totals approximately 202.2 acres and is located in Mono County, California. The bill also would revoke the withdrawal of other lands in Mono County, totaling about 160 acres, which comprise a portion of the lands originally withdrawn by Act of Congress on March 4, 1931, to protect the watershed supplying water to Los Angeles.

We strongly support enactment of H.R. 2475.

Enactment of the bill would permit an exchange of lands to protect the Owens River Pupfish, a federally listed endangered species. The 202.2 acres of private land contains habitat of the pupfish and has been offered in exchange for public lands which are part of the 160 acres withdrawn under the Act of March 4, 1931. If the private lands were developed, the pupfish habitat, containing the largest population of the endangered pupfish found anywhere, would be disturbed. Section 204(j) of the Federal Land Policy and Management Act of 1976 provides that the 1931 withdrawal may be revoked only by Act of Congress. If H.R. 2475 is enacted, the lands that have been withdrawn would be restored to the operation of the public land laws and exchanged for the land that would be protected as

91-534 O—82——10

APPENDIXES

APPENDIX I

Responses From the Department of Agriculture to Additional Questions

United States Department of Agriculture | Forest Service | Washington Office | 12th & Independence SW P.O. Box 2417 Washington, DC 20013

1982 MAR -5 PM 4:23

Reply to: 1510

Date: MAR 5 1982

Honorable Malcolm Wallop
United States Senate
Washington, DC 20510

Dear Senator Wallop:

Enclosed are responses to the questions asked in your February 23, 1982, letter concerning S. 706.

Sincerely,

J. Dale Robertson

For: R. MAX PETERSON
Chief

Enclosure

Questions by Senator Schmitt:

1. Q. On what lands can the Forest Service now perform their own boundary surveys?

   A. On those National Forests in the States comprising the original 13 states, in Puerto Rico and Texas, and in all other areas where the land to be surveyed was acquired from private owners and previously surveyed under State laws.

2. Q. What is the magnitude on the Forest Service's survey needs nationally?

   A. There are about 272,000 miles of National Forest System boundary that require surveys to mark and post the property line. An additional 180,000 miles of survey is needed to support the 272,000 miles of exterior boundary surveys by way of establishing or maintaining controlling corners needed to tie down property corners. These supporting surveys are not marked or posted but are a part of the original survey job.

3. Q. How much work has been completed to date?

   A. Just over 47,000 miles have been completed (marked and posted) through fiscal year 1981.

4. Q. To what extent does the completed survey work reflect the Forest Service's response to the Resources Planning Act?

   A. Of the 47,000 miles completed, 28,000 miles have been completed in the last 5 years, more than in the previous 20 years (19,4000 miles).

   The Forest and Rangeland Renewable Resources Planning Act of 1974 sets forth congressional direction regarding treatments needed to restore the resources of the National Forest System, including direction to eliminate backlogs of needed treatments. The Renewable Resource Program, the document prepared and transmitted to Congress each 5 years in response to the Act, describes specific targets regarding boundary surveys. The 1980 report sets 2020 as the year all needed surveys will be completed. It also presents a program for the next 5 years aimed toward that goal. The recommended program places the survey effort in a supporting role to the ongoing resource management activities of the National Forest System instead of handling it as a separate, independent effort. This shift in emphasis will permit better scheduling of surveys in advance of timber sales, tree planting and other resource activities.

5. Q. Has timeliness of surveys improved on Forest Service lands as a result of the Memorandum of Agreement between your agency and the Bureau of Land Management?

A. Yes, for the most part surveys are being completed faster, particularly where BLM has physically located its surveyor at the National Forest project office. Some problems exist in areas of intense resource development where agency (BLM) priorities have had to be revised to handle a new direction, such as oil and gas development.

6. Q. Does the Forest Service want authority to conduct surveys on National Forest System lands created from the public domain?

A. Yes. The need for more timely surveys of NFS lands plus the need to prevent or resolve cases of encroachment and trespass on NFS lands are our main reasons for making the recommendation to the Committee in our testimony.

DAVID PRYOR
ARKANSAS

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United States Senate
WASHINGTON, D.C. 20510

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
GOVERNMENTAL AFFAIRS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON ETHICS

December 3, 1981

The Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D. C. 20510

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
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U.S. SENATE

Dear Mr. Chairman:

Enclosed is correspondence I received from a constituent in Arkansas. I believe that the statements he makes regarding S. 706 will be a valuable contribution to the hearing record of this bill.

I respectfully request that the enclosed letter be made a part of the permanent hearing record.

Sincerely,

David Pryor

DP/spj
Enclosure

DEC 7 1981

ARKANSAS ASSOCIATION
OF
REGISTERED LAND SURVEYORS

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LITTLE ROCK, ARKANSAS 72209

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An Affiliate of American Congress on Surveying and Mapping

November 5, 1981

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Reply to Office of C.H. Disney

Honorable David Pryor
United States Senate
248 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Pryor:

There are two proposed bills that the surveyors of Arkansas are vitally interested in. They are HR 4399 and S 706. We ask you support in reguard to these bills.

First, the Bureau of Land Management has performed surveys which become the official surveys. They do not conduct these surveys within a reasonable time frame, sometimes as long as ten to twenty years. Yet their monuments are there and they have an official status. Property lines are established using these monuments, developments are made, housing is built and then the Bureau comes in and moves the monument. All havoc takes place.

Second, the Bureau of Land Management is totally disreguarding state statutes which require Registered Land Surveyors in the state to be responsible for the survey work. Also, they do not file the results of their work with the county clerk as required or with the State Land Surveyor's Office.

Third, the proposed legislation provides that the Bureau of Land Management may enter into private contracts to perform the survey work. This would allow them to complete their surveys much quicker and more accurately by using local surveyors who have knowledge of the original corners previously established in their area. Also, this would tend to promote saging economy in different areas of the nation.

Thank you and your support will be appreciated.

Yours very truly,

AARLS

John Ed Isbell

John Ed Isbell, President

JEI/cde

"cursed be he that removeth his neighbor's landmarks" . . . Deut. 27:17